

1 UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF VIRGINIA
 3 CHARLOTTESVILLE DIVISION

3 CYNTHIA B. SCOTT, ET AL.,) 3:12-CV-00036
 4)
 4 PLAINTIFFS,) Charlottesville, Virginia
 5) June 15, 2018
 5 v.) 9:00 a.m.
 6)
 6 HAROLD W. CLARKE, ET AL.,)
 7)
 7 DEFENDANTS.)

8
 9 VOLUME 7
 9 TRANSCRIPT OF BENCH TRIAL
 10 BEFORE THE HONORABLE NORMAN K. MOON
 10 UNITED STATES DISTRICT JUDGE

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DEFENDANT EXHIBITS

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1 (Proceedings commenced at 9:00 a.m.)

2 MR. McNELIS: Good morning, Your Honor.

3 THE COURT: Good morning. Okay. Ready to call the
4 first witness?

5 MR. McNELIS: Your Honor, the defense calls James
6 Hatcher.

7 THE COURT: I might suggest that one way to save a
8 little time is all of these people -- unless somebody thinks
9 someone is not qualified, it seems to me I've read all the
10 qualifications in the papers you've already handed up
11 previously. I don't think it's necessary to spend so much
12 time just on the qualifications of a witness unless there is
13 some question about whether he's qualified.

14 MR. McNELIS: Your Honor, I anticipated what the
15 Court just said, and what I was going to do -- we have two
16 experts.

17 THE COURT: You don't have to explain it to me. I'm
18 just making a suggestion.

19 MR. McNELIS: I was going to put the CV in, if no one
20 objected for Dr. Joshua, and have him talk five minutes about
21 his qualifications. Not even that.

22 THE COURT: Okay. That's fine.

23 MR. McNELIS: Mr. Hatcher is not an expert. He is a
24 fact witness, Your Honor.

25

DIRECT EXAMINATION OF JAMES HATCHER

JAMES HATCHER, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. McNELIS:

Q Good morning, Mr. Hatcher.

A Good morning.

Q Could you please state your full name and professional address?

A Willy James Hatcher, 717 Villa Drive, Chester, Pennsylvania.

Q Okay. And Mr. Hatcher, you will probably need to get a little closer to the microphone so everyone can hear your testimony.

Mr. Hatcher, how are you currently employed?

A Through Armor Correctional Health Services.

Q And what is your position with Armor Correctional Health Services?

A Senior -- senior regional vice president.

Q Okay. And what region are you the senior vice president for?

A Virginia.

Q How long --

A And Virginia only.

Q Virginia only?

A Yes.

Q And for how long have you been the senior regional vice

DIRECT EXAMINATION OF HAMES HATCHER

1 president for Virginia?

2 A October 2014.

3 Q Now, how many facilities as the regional vice president
4 do you currently oversee?

5 A 14.

6 Q Now, just to be clear, are you a clinical person or are
7 you an administrative person?

8 A I'm administrative, but I also have a BSN in nursing.

9 Q Mr. Hatcher, let me focus you on Fluvanna. Is Fluvanna
10 one of the facilities that you are the regional vice president
11 for?

12 A Yes, sir.

13 Q And just briefly describe for the Court what your
14 responsibilities are with the different facilities that you
15 oversee in Virginia. What generally are your
16 responsibilities?

17 A Generally, at the facilities we would have a regional
18 manager. And that regional manager would be in charge of
19 maybe three, four, potentially five facilities. They would
20 report directly to me. The site administration would report
21 to them.

22 Q Is among the responsibilities you have at the different
23 facilities, including Fluvanna, providing staff?

24 A Yes, sir.

25 Q Does that include both nursing staff and medical doctor

DIRECT EXAMINATION OF HAMES HATCHER

1 staff, physician staff?

2 A Yes, sir.

3 Q Let me ask you a little bit about Fluvanna. Were there
4 times at Fluvanna after you took over the contract when the
5 VDOC would ask you to provide staff above and beyond that
6 which the contract called for?

7 A Yes, sir.

8 Q And what was Armor's response to those requests?

9 A We would provide the extra staffing that was required, or
10 questioned or asked of us by VDOC.

11 Q And did you -- well, let me ask you a couple of specific
12 examples. Can you give the Court a few examples of additional
13 staff that Armor was requested to provide that you provided at
14 Fluvanna?

15 A Physical therapy. We provided a physical therapy person
16 who worked exclusively at Fluvanna. We brought on two
17 additional PT assistants to provide care at Fluvanna.

18 They requested that we bring on an HR person that
19 would be on the ground at Fluvanna to help with recruitment.
20 We did that. We provide extra NP, meaning nurse practitioner,
21 hours, as well as medical doctor hours.

22 Q Did Armor, to your knowledge -- well, first of all, would
23 you be the person to talk to the VDOC about contract issues?

24 A Yes.

25 Q Okay. Did you ask the VDOC to increase their payments

DIRECT EXAMINATION OF HAMES HATCHER

1 under the contract for the additional staff they requested?

2 A No, we did not.

3 MS. CASTANEDA: Your Honor, I would just like to say
4 that the plaintiffs have an objection to any line of
5 questioning about pricing, profit and loss, risk-reward, or
6 liquidated damages, if I can just take a minute to sort of
7 explain the basis of that.

8 So in this case, we noticed Armor Correctional for a
9 30(b)(6) deposition. Mr. McNelis is counsel for Armor as well
10 as VDOC. They objected and filed a motion to quash our
11 notice, which the Court denied in part. Ordered the parties
12 to meet and confer; we did that, narrowed the topics down to
13 26, I think, six of which we agreed to accept written
14 responses. So then there became an issue over Topics 1 and 2,
15 which is the substance, including pricing, of Armor's contract
16 with VDOC for health care at FCCW to be performed at any time
17 during the period from February 5, 2016, to the present,
18 including any risk-reward or other provisions contemplating
19 cost savings achieved by the contractor in performance of the
20 contract; and then the second one was standards and criteria
21 by which Armor evaluated the profitability of the contract,
22 and the identity and location of all documents referring,
23 relating, or reflecting such evaluation.

24 And at one point, Mr. Hatcher was designated as the
25 person to answer those questions, to be deposed on June 1.

DIRECT EXAMINATION OF HAMES HATCHER

1 On May 30, I heard from counsel, who said in trying
2 to prepare Mr. Hatcher it's become abundantly clear that he
3 has nothing to do with the contracting process or pricing, or
4 determining profits or losses on the VDOC contract. It is
5 further abundantly clear that only Bruce Teal can field the
6 money questions. And thus, we did not depose Mr. Hatcher on
7 those topics, and in fact, nobody was ever made available to
8 answer those questions.

9 So on the one hand, plaintiffs would object because
10 it doesn't appear that the witness is qualified under Rule 602
11 to answer those questions from personal knowledge; or on the
12 other hand, if he is qualified, then we would object under
13 Rule 37 because Armor failed to provide somebody to answer
14 those questions under Rule 30(b)(6).

15 MR. MCNELIS: Your Honor, I'm trying to keep this
16 brief because this is a really complicated situation, but this
17 is what happened. We objected to their 30(b)(6) notice. It
18 was filed two and a half weeks before the close of discovery.
19 And Judge Hoppe said, That's a little late. That's quite
20 late. Why don't you meet and confer and see if you can
21 whittle that down?

22 Mr. Bennett -- Lynn Bennett, who is not here -- and I
23 met in his office. I drove to his office and we met for an
24 hour. And we whittled the 30(b)(6) notice down somewhat.
25 Probably two-thirds is what we gave them.

DIRECT EXAMINATION OF HAMES HATCHER

1 That specific topic, originally the agreement was we
2 would produce financial records, and then we would provide a
3 telephone interview with the CEO, Bruce Teal, who is also the
4 financial guy. And we offered a date for Mr. Teal, and they
5 said that date is too late. Mr. Teal was on a vacation. So
6 they said, no, that's too late. That's not going to work. So
7 then I said, well, let me see if I can get James Hatcher to
8 cover so we don't have to go and raise the issue again.

9 In prepping Mr. Hatcher, he is not the, you know,
10 profit-and-loss numbers guy. Those subjects are specific
11 numbers-type questions, accounting questions. He's not an
12 accountant. So I said, he is not the guy to do it. We can
13 offer Bruce Teal on that same day. And it -- you know, it
14 went back and forth and it just didn't work out. No one
15 refused to provide a witness on that. We were trying to --

16 THE COURT: Well, if he didn't know then, how does he
17 know today?

18 MR. McNELIS: Well, he is not going to talk about
19 that. I'm not going to have him talk about detailed
20 accounting stuff. He doesn't know that. No, sir, I'm not
21 going to get that from him.

22 I'm asking him, when Armor -- the question is, when
23 VDOC asked for additional personnel, did Armor provide it?
24 Did you ask for more money? Now, that is not what subjects 1
25 and 2 of that VDOC notice is. And even if it is within the

DIRECT EXAMINATION OF HAMES HATCHER

1 ambit of that 30(b)(6) notice, just because he wasn't tendered
2 as a corporate representative on the subject doesn't mean he
3 can't have some knowledge about it. I mean, that's not -- to
4 my knowledge, that's not how 30(b)(6) works.

5 We are trying to put forth the person who has the
6 best knowledge of the corporation. He is not the person who
7 has the best knowledge for Armor about pricing, profits and
8 loss. That's not -- because he is not an accountant.

9 THE COURT: Well, will you ask for someone who would
10 know it?

11 MR. McNELIS: We had a deal, Mr. Bennett and I, that
12 I would provide the financials, which I did. I gave him the
13 financials. They were going to have a telephone interview
14 with Bruce Teal, the CEO, who is also the chief financial
15 officer, and then they were going to submit written questions
16 after the telephone interview. It broke down when I said
17 Mr. Teal is available for a telephone interview on June 6.

18 All these negotiations were going on in late in May,
19 Your Honor. Everything was pushed way back. And they said,
20 no, that's too late. We don't want that date.

21 THE COURT: Well, let's go with this witness and what
22 he knows. I don't --

23 MR. McNELIS: Yes, sir. I'm not going to ask him
24 what he doesn't know, sir.

25 THE COURT: You can object to it later. Move to just

DIRECT EXAMINATION OF HAMES HATCHER

1 strike his evidence if it's not proper.

2 BY MR. McNELIS:

3 Q Mr. Hatcher, you were explaining to the Court the
4 specific examples of when the VDOC requested additional
5 staffing in the Fluvanna contract.

6 I believe my question was: Did Armor ask the VDOC
7 for additional money under the contract to provide that
8 staffing?

9 A No, we did not.

10 THE COURT: Well, why not? I mean, you are in
11 business. Why would -- and you have got a contract. Why
12 wouldn't you be -- expect compensation for what you do?

13 THE WITNESS: Because we had been a partner of the
14 DOC for quite some time, since 2006, and we valued that
15 partnership. So we were so concerned about care, about health
16 care. We wasn't as concerned about money. We wanted to do a
17 good job.

18 THE COURT: Okay. Go ahead.

19 BY MR. McNELIS:

20 Q And Mr. Hatcher, you mention -- I believe you said you
21 have 14 facilities in Virginia that you manage?

22 A Yes, sir.

23 Q And do you manage 14 facilities now?

24 A Yes, sir.

25 Q Over the past four years, of those 14 facilities, which

DIRECT EXAMINATION OF HAMES HATCHER

1 one has occupied the majority of your time, sir?

2 A Fluvanna.

3 Q Why is that?

4 A It has been the most challenging one.

5 Q How so? How has it been the most challenging one?

6 A In terms of staffing, in terms of recruiting, in terms of
7 retention, Fluvanna by far has been the most challenging one
8 of the other 13.

9 Q Now, let me ask you: You were explaining how additional
10 staffing had been requested and was provided. Have you, in
11 your position with Armor, received any resistance to assisting
12 with additional staffing or providing other resources to
13 Fluvanna?

14 A I don't understand your question, sir.

15 Q I'm saying, within Armor, when the VDOC has requested,
16 for example, additional staffing, and you indicated that the
17 staffing was provided, have you encountered -- you, sir, in
18 Armor's chain of command -- resistance to doing that? No, we
19 don't want to do that?

20 A No, not at all.

21 Q From your perspective as the regional vice president of
22 the Virginia contract, has Armor tried to cooperate as best
23 that you can to assist the VDOC to provide good care at
24 Fluvanna?

25 A Yes, we have.

DIRECT EXAMINATION OF HAMES HATCHER

1 Q Now, let me ask you: There has been a lot of testimony
2 about difficulties hiring a medical director. Do you have any
3 involvement, sir, in hiring medical staff at Fluvanna?

4 A Yes, sir.

5 Q What is your responsibility or role within that process?

6 A We have a full-time recruiter on the ground on-site at
7 Fluvanna who would assist in that process as well. We have a
8 regional recruiter whose responsibility it is to recruit.
9 Between the two of them, they would use various means of
10 advertisement to attract people to apply.

11 Once someone applied and we got into the interview
12 state -- and usually that would happen on the phone first, we
13 would do a phone interview -- when that happened, I would be
14 involved with that process.

15 Q Can you tell the Court what types of recruiting efforts
16 were undertaken to find a medical director at Fluvanna? How
17 did y'all go about that?

18 A What we would do, we would get a listing from the
19 Virginia medical licensing board of physicians that were
20 licensed in Virginia in that immediate area. And then we
21 would do cold calling. We would do mailings. We would do
22 things of that sort to let them know that we had a position
23 available.

24 Q Did you hire recruiters to assist you? Did you have
25 recruiters that assisted you in --

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1 A Yes.

2 Q Can you tell the Court about that, about the recruiters
3 and what they would do for you?

4 A The recruiters would then screen those applicants. And
5 once they got a CV, once that applicant appeared to be
6 interested, then we would set up a phone interview.

7 Q Did you do any national recruiting using the Internet or
8 anything of that nature?

9 A Yes, we did.

10 Q Can you tell the Court about that?

11 A We advertised through MD, ZipRecruiter, Craigslist.
12 Virginia, through Fluvanna County; they allowed us to do a
13 posting with them. CareerBuilder. Social media, to include,
14 Facebook, LinkedIn. We also advertised through the Virginia
15 Council of Nurse Practitioners, *Family Physician* magazine in
16 Virginia, Doximity. So we attempted to hire a physician
17 through many different sources.

18 MR. McNELIS: Your Honor, if I may approach, I'm
19 going to ask the court reporter to mark this as Defendant's
20 Exhibit 32 for identification.

21 (Defendant Exhibit Number 32 was marked and received.)

22 MR. McNELIS: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MR. McNELIS:

25 Q Mr. Hatcher, I'm going to show you what's been marked as

DIRECT EXAMINATION OF HAMES HATCHER

1 Defendant's Exhibit 32 for identification.

2 Mr. Hatcher, do you recognize Defendant's 32 for
3 identification?

4 A Yes, sir.

5 Q Can you please tell the Court what it is?

6 A It's a listing of physicians that we in some way or the
7 other have been in contact with since early '16, 2016, that we
8 attempted to get to work for us at Fluvanna.

9 Q And how many physicians are listed on Exhibit 32 for
10 identification?

11 A There's 21, but one is listed twice. So in essence there
12 would be 20.

13 Q Did you have a role in reviewing these 20 candidates in
14 some fashion for potentially filling the spot of full-time
15 medical director at Fluvanna?

16 A I did not interview or personally get involved with all
17 of them. Some of them never made it to a phone interview.

18 Q Why is that, to your knowledge?

19 A Some never got back to us after several requests for CVs.
20 Some, when they got back to our recruiters, they said they
21 wasn't interested in relocating. They wasn't licensed in
22 Virginia. So there was a combination of reasons why several
23 of them never made it to the interview process.

24 Q Did some of them make it to the interview process?

25 A Yes, sir.

DIRECT EXAMINATION OF HAMES HATCHER

1 Q And of the ones who made it to the interview process, did
2 any of them accept the position of regional medical
3 director -- or were any of them offered the position of
4 regional medical director?

5 A Yes. Yes.

6 Q Did any of them accept?

7 MS. CASTANEDA: Your Honor, I just want to say that
8 plaintiffs do have an objection to this exhibit. We did
9 object on the basis of the defendant's mischaracterization of
10 that document, on the basis of relevance and unfair prejudice,
11 and on the basis of hearsay. Of course, if he is just using
12 it to refresh his recollection, that's --

13 MR. McNELIS: I haven't offered it yet, Your Honor.

14 BY MR. McNELIS:

15 Q Mr. Hatcher, the question I asked you before we had the
16 objection was: Did any of the physicians to whom you offered
17 the job of regional medical director accept the job?

18 A We had one that accepted the assistant or acting or
19 medical director-in-training position, yes. We had one.

20 Q And who was that?

21 A His name was -- we called him Dr. K, because it was
22 somewhat hard to pronounce.

23 Q Is it Dr. Kwiatkowski?

24 A Yes.

25 Q Now, there's been some testimony about

DIRECT EXAMINATION OF HAMES HATCHER

1 Dr. Kwiatkowski -- well, strike that.

2 Dr. Kwiatkowski is currently employed at Fluvanna.

3 Correct?

4 A Correct.

5 Q And what is his current position?

6 A You mean what is his title?

7 Q Yes, what's his title? Yes, sir.

8 A He is the medical director-in-training.

9 Q And we understand that the full-time medical director is
10 Dr. Gable; is that correct?

11 A That is correct.

12 Q Now, Dr. Kwiatkowski, did you have involvement in his
13 hiring?

14 A Yes.

15 Q Now, there has been testimony that -- well, first of all,
16 is Dr. Kwiatkowski a UVA medical school graduate?

17 A That is -- yes. According to his CV.

18 Q And is he an AOA, Alpha Omega Alpha, UVA medical
19 graduate?

20 A Yes, it is our understanding that he came in at the top
21 10 percent of his class, yes.

22 Q After he graduated in the top 10 percent of his class at
23 the University of Virginia, did he go to the University of
24 North Carolina Chapel Hill and complete a three-year residency
25 program in family practice?

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1 A That is my understanding, that he was licensed in two
2 states.

3 Q Okay. And he went on to become board certified in family
4 practice. Correct?

5 A That is my understanding.

6 Q And to your knowledge, is he still board certified in
7 family practice?

8 A That is my understanding.

9 Q And is he licensed, to your knowledge, actively licensed,
10 in North Carolina and the Commonwealth of Virginia?

11 A That is my understanding.

12 Q And is Dr. Kwiatkowski currently -- I think you said he's
13 currently working at the facility?

14 A Correct.

15 Q Has he -- as I understand, you are not a clinical person.
16 Have you heard good things about his provision of health care?

17 MS. CASTANEDA: Objection. Hearsay.

18 BY MR. McNELIS:

19 Q Is Dr. Kwiatkowski a good physician?

20 MS. CASTANEDA: Objection. Calling for opinion
21 testimony.

22 BY MR. McNELIS:

23 Q All right. Let me rephrase it this way. Have you had
24 any problems or complaints, to your knowledge, as -- if a
25 physician is not doing their job right at Fluvanna and there

DIRECT EXAMINATION OF HAMES HATCHER

1 is a complaint, is that something you would be aware of?

2 A Yes.

3 Q Okay. Have there been complaints about Dr. Kwiatkowski's
4 clinical practice?

5 A No, sir.

6 Q All right. Is Exhibit 32 for identification a summary,
7 an accurate summary, of the interactions you had with the 20
8 doctors who you considered for the medical director position
9 at Fluvanna?

10 A Yes.

11 MR. McNELIS: Your Honor, I would like to offer
12 Defendant's Exhibit 32 for identification, as Defendant's
13 Exhibit 32 is a summary of efforts to hire a medical director,
14 under Federal Rule of Evidence 1006. That's my basis.

15 MS. CASTANEDA: Plaintiffs, as stated, have
16 objections on the basis of relevance, unfair prejudice, and
17 hearsay, and also foundation.

18 THE COURT: Well, it's relevant to show how many
19 people they talked to looking for a medical director, so I
20 will admit it.

21 MR. McNELIS: Thank you, sir.

22 BY MR. McNELIS:

23 Q Now, let me ask you about nursing staff, Mr. Hatcher.
24 Were you also involved as the regional vice president for the
25 Virginia contract in recruiting nursing staff?

DIRECT EXAMINATION OF HAMES HATCHER

1 A Yes, I was.

2 Q Let me ask you: Were there challenges -- well, strike
3 that.

4 Was it difficult to hire nursing staff at Fluvanna?

5 A Yes, it was.

6 Q Was it difficult to hire nursing staff at the other 13
7 facilities that you were the regional vice president for?

8 A Not as challenging as Fluvanna.

9 Q Can you tell the Court what challenges you had at
10 Fluvanna?

11 A One example: We had a job fair in Fluvanna. Only one
12 person showed up. We had folk who would accept -- they would
13 interview, they would accept the position, and at some point
14 before they even started they would call us back and say that
15 they had changed their mind.

16 Q Did they say why they had changed their mind?

17 A When we did the interview --

18 MS. CASTANEDA: Objection. Hearsay.

19 THE COURT: Sustained.

20 MR. McNELIS: Okay. Yes, sir.

21 BY MR. McNELIS:

22 Q Any other challenges that you can recall with regard to
23 hiring nursing staff at Fluvanna?

24 A When we did the interview, we would let them know that
25 Fluvanna was under a settlement agreement. We wanted to be

DIRECT EXAMINATION OF HAMES HATCHER

1 very up front and candid with them. And many of them at some
2 point -- not that they all said that they wasn't coming as a
3 result of that, but some at that point did not.

4 MS. CASTANEDA: Objection. Hearsay.

5 THE COURT: Sustained.

6 BY MR. McNELIS:

7 Q Let's not talk about what they said, but what did they
8 do?

9 A They did not come to work for us at Fluvanna.

10 Q Did you at some point -- or strike that.

11 Did you offer incentives? Did Armor offer incentives
12 to try to hire nurses at Fluvanna that were unique to
13 Fluvanna?

14 A Yes, we did.

15 MR. McNELIS: Let me have marked as Defendant's
16 Exhibit 33 for identification this document.

17 (Defendant Exhibit Number 33 was marked and received.)

18 MR. McNELIS: May I approach, Your Honor?

19 THE COURT: Yes.

20 BY MR. McNELIS:

21 Q I'm going to present to you what I have had marked as
22 Defendant's Exhibit 33 for identification.

23 Mr. Hatcher, have you seen Defendant's 33 for
24 identification before?

25 A Yes, I have.

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1 Q Can you tell the Court what Defendant's Exhibit 33 for
2 identification is?

3 A It's a posting that -- of the advertisement that we used
4 in order to attract a medical director as well as nurses at
5 Fluvanna.

6 Q And what type of financial incentives did Armor offer
7 at -- to hire nursing staff at Fluvanna?

8 A For an LPN, we offered \$1,800; for RNs, we offered 2,000.

9 Q 1,800 for what? When you're saying 1,800, 1,800 --

10 A \$1,800.

11 Q A sign-on bonus?

12 A Yes, a sign-on bonus.

13 Q And for RNs, you said 2,000?

14 A 2,000 as a sign-on bonus. And as a medical director,
15 10,000 as a sign-on bonus.

16 Q And did you offer, from time to time, other incentives,
17 other than what are reflected on Defendant's Exhibit 33 for
18 identification?

19 A Yes.

20 Q And is Defendant's Exhibit 33 for identification in fact
21 a description of an incentive hiring program that you had at
22 Fluvanna?

23 A In addition to this, we also gave the nurses at Fluvanna,
24 LPNs, a \$2-per-hour raise. We gave the RNs a \$1-an-hour
25 raise.

DIRECT EXAMINATION OF HAMES HATCHER

1 Q Mr. Hatcher, despite those incentives -- well, did those
2 incentive programs fix the problems you were having hiring
3 staff at Fluvanna?

4 MS. CASTANEDA: Your Honor, can we have a time frame
5 on this?

6 MR. McNELIS: Absolutely, Your Honor.

7 BY MR. McNELIS:

8 Q Do you remember approximately when the incentive hiring
9 program took place, or over what period of time, Mr. Hatcher?

10 A I think it would have started in January of 2016, and
11 they are ongoing.

12 Q First of all, let me ask you again: Is Defendant's
13 Exhibit 33 for identification, is that an accurate description
14 of an incentive program that Armor offered during the time
15 frame that you just identified?

16 A Yes.

17 MR. McNELIS: I would like to move Defendant's
18 Exhibit 33 into evidence -- for identification into evidence
19 as Defendant's 33.

20 THE COURT: All right. It will be admitted.

21 MS. CASTANEDA: No objection.

22 MR. McNELIS: Thank you.

23 BY MR. McNELIS:

24 Q Mr. Hatcher, can you tell us -- you mentioned earlier
25 that Armor's providing a full-time physical therapist at

DIRECT EXAMINATION OF HAMES HATCHER

1 Fluvanna?

2 A Yes.

3 Q And there were also physical therapy assistants at
4 Fluvanna?

5 A Yes.

6 Q At the other 13 facilities that you manage, to your
7 knowledge, in those facilities -- do you provide a full-time
8 physical therapist at any other facility?

9 A No, we do not.

10 Q How about the human resources director? Do you have one
11 at Fluvanna?

12 A Yes.

13 Q Do you have those at all the other 13 facilities that
14 you --

15 A No, we do not.

16 Q Are there any other extra staff that you have at Fluvanna
17 that you don't have at the other 13 facilities?

18 A We provide more hours for some of the staff that is
19 outside of the contract at Fluvanna than we do at any other
20 facility.

21 Q What is Armor's purpose in providing additional staff
22 above and beyond the contract, not requesting additional
23 compensation? What is Armor's purpose in doing that at
24 Fluvanna?

25 A Because we want to provide good health care.

REDIRECT EXAMINATION OF JAMES HATCHER

1 MR. McNELIS: Thank you, sir. Those are the
2 questions I have this morning.

3 **CROSS-EXAMINATION**

4 BY MS. CASTANEDA:

5 Q Mr. Hatcher, is Armor a for-profit corporation?

6 A Yes.

7 Q Armor didn't meet the staffing requirements of the VDOC
8 contract for the months of February and April through December
9 of 2017; is that correct?

10 A Correct.

11 Q And Armor had to pay penalties for not meeting the
12 staffing requirements; is that right?

13 A Correct.

14 Q Armor also paid penalties for not meeting the staffing
15 requirements in January and February of 2018; is that right?

16 A Correct.

17 Q Is Armor's contract with VDOC scheduled to end in October
18 of this year?

19 A Yes.

20 MS. CASTANEDA: No further questions.

21 THE COURT: All right. Thank you.

22 MR. McNELIS: Can I ask just one redirect, Your
23 Honor?

24 **REDIRECT EXAMINATION**

25 BY MR. McNELIS:

REDIRECT EXAMINATION OF JAMES HATCHER

1 Q With regard to penalties for staff, from -- is it less
2 expensive to provide somebody, or is it less expensive to pay
3 a penalty?

4 MS. CASTANEDA: Your Honor, I would just restate our
5 objection under Rule 37, and also --

6 THE COURT: Sustained.

7 You haven't provided -- they requested all this
8 financial information. It wasn't provided, is my
9 understanding.

10 MR. McNELIS: No, sir, it was provided. I personally
11 provided it. Yes, sir, it was provided.

12 THE COURT: Well, who is the witness that's missing
13 that has the information?

14 MR. McNELIS: Your Honor, we are not putting on a
15 financial case. That's not my case.

16 THE COURT: Okay.

17 MR. McNELIS: That's not my case, Your Honor.

18 THE COURT: Well, then, don't ask the question.

19 MR. McNELIS: Well, she opened the door to penalties.
20 I didn't bring it up on direct, Your Honor.

21 THE COURT: Well --

22 MR. McNELIS: That's why I asked it.

23 THE COURT: That didn't -- go ahead. Let's go.

24 MR. McNELIS: Okay. I have nothing further, Your
25 Honor.

DIRECT EXAMINATION OF BARBARA SEABERT

1 THE COURT: Thank you, sir. You may step down.

2 Next witness.

3 MS. GRIGGS: She is coming in sworn.

4 **BARBARA SEABERT, DEFENDANT'S, SWORN**

5 **DIRECT EXAMINATION**

6 BY MS. GRIGGS:

7 Q Could you state your name for the record, please?

8 A Barbara Jean Seabert.

9 Q Good morning, Ms. Seabert. Can you tell us, are you
10 currently employed at Fluvanna Correctional Center for Women?

11 A No.

12 Q When were you last employed there?

13 A April 1, 2018.

14 Q And what was your position at that time?

15 A Director of nursing.

16 Q And when did you become director of nursing at Fluvanna
17 Correctional Center for Women?

18 A December 2016.

19 Q And had you been at Fluvanna before you became director
20 of nursing?

21 A Yes.

22 Q What was your position before you were the director of
23 nursing?

24 A I was a supervisor for building two.

25 Q And when did you first come to be employed at Fluvanna

DIRECT EXAMINATION OF BARBARA SEABERT

1 Correctional Center for Women?

2 A End of May 2016.

3 Q Are you a licensed health care provider?

4 A I am.

5 Q What type of license?

6 A I'm a registered nurse.

7 Q I want to ask you a little bit about your background
8 before we start to talk about Fluvanna, if I could.

9 When did you first become a licensed nurse?

10 A 2005.

11 Q And what were you doing prior to 2005?

12 A I was in the military for the National Guard. I did 25
13 years there. And I also was an aircraft mechanic before I
14 became a nurse.

15 Q Were you a health care provider any of that time while
16 you were in the military?

17 A I was.

18 Q What type of health care provider?

19 A I was a medic on a UH-1 helicopter, and then I became a
20 nurse once I -- in 2005.

21 Q And as a nurse from 2005 on, can you give us just a
22 little bit of your background?

23 A I was -- I went right into emergency medicine, so I was
24 an ER nurse. And I did that all the way up until 2013, and
25 then I went into management when I got my master's.

DIRECT EXAMINATION OF BARBARA SEABERT

1 Q So you have a master's in nursing?

2 A I do.

3 Q Okay. And then from your master's you went straight to
4 Fluvanna?

5 A I had -- actually was an ER nurse in management in two
6 different ERs for Corovion. And then when I moved up to
7 Charlottesville, I went to Fluvanna.

8 Q I want to talk to you a little bit about how nursing
9 generally was provided at Fluvanna Correctional Center for
10 Women when you got there.

11 We've heard some testimony so far about nurses in
12 buildings and sick call and things like that. Can you tell us
13 sort of where was health care provided at Fluvanna when you
14 first got there?

15 A The LPNs were in all the outside buildings, which were
16 one, two, three, five, six, and eight. The RNs were the
17 supervisors. And they were also in acute, and they were also
18 in the infirmary.

19 Q And those buildings where the LPNs were located, were
20 those residential housing units?

21 A Yes.

22 Q And then building two, was that sort of the central
23 medical facility for Fluvanna?

24 A That's correct.

25 Q Okay. What were the services that LPNs were providing in

DIRECT EXAMINATION OF BARBARA SEABERT

1 those residential units when you started at Fluvanna?

2 A They gave the pills during our pill line. They did
3 treatment lines. And then they were -- kind of like, if the
4 offenders came to them and had a complaint, they would write
5 that down, and then they would call the provider and get
6 further treatment.

7 Q Did they have any role in sick call, the LPNs in the
8 individual buildings?

9 A They would actually do vitals and they would write down
10 the complaint. If it was something that was in their scope of
11 practice, then they would give out, like, let's say, anything
12 that you would take at home, Pepto Bismol. But they had to
13 have, you know, that order for it. If not, they would call
14 the provider.

15 Q So the LPNs were providing that care in each of the
16 individual buildings. And then what care was being provided
17 in building two?

18 A The infirmary, acute care, the sick call, and then also
19 for the clinic for the providers.

20 Q And then -- so sick call that was in building two, what
21 type of a provider was providing that when you started at
22 Fluvanna Correctional Center for Women?

23 A For sick call?

24 Q Yes, in building two.

25 A An LPN.

DIRECT EXAMINATION OF BARBARA SEABERT

1 Q Okay. And then there were providers in the clinic?

2 A Correct.

3 Q When you started at Fluvanna Correctional Center for
4 Women, did you tell us that you were a nurse supervisor?

5 A Yes.

6 Q What did that mean? What were you doing?

7 A So I was in building two. So I was making sure that the
8 infirmary, for people that were coming back from their
9 appointments were getting the vitals and were okay to go back
10 to the buildings. Was, you know, supervising the LPNs, the
11 RNs. I was actually on the floor helping them if they needed
12 help. I was giving them lunch breaks. I would go back to
13 acute and make sure that those nurses were doing okay, because
14 there was just one RN back there to provide for those acute
15 care inmates.

16 Chronic care was there. So I was always making sure
17 she was on time, and then that the sick call was running well,
18 and then also that the doctors were still running, you know,
19 on time. And if they were late, then I would stay and help
20 them or make sure the LPNs could stay and help.

21 Q When you were in the private practice of nursing in
22 emergency rooms and things like that, did nursing supervisors
23 provide similar sorts of support?

24 A Yes.

25 Q So you were familiar with this before you got to

DIRECT EXAMINATION OF BARBARA SEABERT

1 Fluvanna?

2 A Yes.

3 Q Okay. After -- let's talk a little bit about some of the
4 actual services that were provided by the LPNs. Can you
5 describe for us pill call or pill distribution?

6 A We went off of a time that the DOC, you know, gave us.
7 So we would have pill line ready right at 5:30. We would have
8 a diabetic line first so they could go get breakfast, and then
9 we would start the regular pill line.

10 We did that pill line for morning. We did a pill
11 line again at noon. We did a pill line again at 4:00. And
12 then we did another pill line at night, about 8:30, 9:00.

13 Q Was there more than one diabetic stick during the day?

14 A Yes. We had diabetic stick in the morning, noon, and
15 then dinnertime, and then at night.

16 Q And then talk to me a little bit, please, about
17 treatments that were done by the LPNs.

18 A Treatments were twice a day. They were usually around
19 10:00 or 11:00, and then again at night, 8:30.

20 Q When you first came to Fluvanna, was it your
21 understanding that this format of LPNs in the buildings
22 providing this care had been in place for a number of years?

23 A Yes.

24 Q After you had been at Fluvanna for a period of time, did
25 you reach any conclusions about that form of providing nursing

DIRECT EXAMINATION OF BARBARA SEABERT

1 care?

2 A Yes. I had noticed that those nurses were isolated.
3 They were -- in the buildings, they seemed like they were -- I
4 felt like I was running around trying to keep them up and
5 helping them any which way I can, and I was only one person.

6 So I would be in building three, and there would be a
7 problem in building eight. And we were, you know, trying to
8 run back and forth to help them, to keep them up to date, you
9 know, because things would happen. You know, medical
10 emergencies, or somebody would get burned in the kitchen or
11 something like that. So we would have to stop our treatment
12 lines or pill lines, and that made us behind. And a lot of
13 the nurses would complain and say, I'm just isolated. I feel
14 like, you know, we are not a team. We need to be together.

15 And then I was having a hard time knowing if they
16 were on time to work, unless -- every time I came to work, I
17 would, you know, have to run to all those buildings and make
18 sure that everybody was there.

19 Trying to get everybody lunch breaks was difficult,
20 because it was just me trying to run around and help them. So
21 we did have some supervisors later on that would help me. But
22 they didn't stay but maybe two or three months at a time.

23 Q Did you come to some conclusion about -- recommend any
24 changes for this form of providing nursing care?

25 A I did. It took me a while. When I first got there, I

DIRECT EXAMINATION OF BARBARA SEABERT

1 was just trying to learn my role. And then after a while I
2 noticed the nurses coming to me with the complaints, and
3 saying, hey, I'm just behind all the time, I need help.

4 It's when I went to our HSA at the time and kind of
5 just brainstormed and said, you know, maybe this would help if
6 we brought everybody together in building two. And it took me
7 time to brainstorm it, write it out on paper, get meetings
8 together, and just get everybody, you know, understanding what
9 I was trying to form. And it took a while to -- you know, but
10 after meetings and we kind of put everything on paper, went to
11 the warden, and there was just a -- we finally decided that
12 everybody needs to be a team and be in one building.

13 Q When did you first start this process of trying to
14 analyze how to make the system work better?

15 A I would say -- I would say August of 2016.

16 Q Did you at any point in time discuss your thoughts on
17 this with Dr. Scharff?

18 A I did. Pretty much after I had everything on paper and
19 we had, you know, the coming together as a management team and
20 then we passed it on to him. And he -- you know, he said,
21 Well, I think it's a good idea, but you need to give me more
22 details. So that's why we had to go back to the drawing board
23 and really draw it out for him.

24 Q Okay. So you worked with him on it for a period of time?

25 A At least four or five months.

DIRECT EXAMINATION OF BARBARA SEABERT

1 Q Did you consider this to be a fundamental change in the
2 way nursing care was provided at Fluvanna?

3 A I did. I thought it would be better. I thought it would
4 be a team effort. I would know if, you know, people needed
5 breaks or were sick or -- you know, it would be better care
6 for the inmates. I just thought it was a better form instead
7 of everybody being isolated out in the buildings by
8 themselves.

9 Q And has that change ultimately come to pass at Fluvanna,
10 with the nurses out of the individual buildings?

11 A Yes. It seemed like it stopped all the call-ins and it
12 stopped a lot of negativity.

13 Q While you were at Fluvanna, was there also a change to
14 the provider process for sick call?

15 A Yes.

16 Q What happened there?

17 A I felt that we were putting our nurses into -- out of
18 their scope of practice. I felt that the nurses needed to be
19 closer to the doctors if there was any problem, and not trying
20 to call them or actually, you know, leave the building and
21 that kind of thing. It just seemed like it was just better
22 all around.

23 Q And has that now changed as well?

24 A Yes.

25 Q Do you know who Distarti Whitehead is?

DIRECT EXAMINATION OF BARBARA SEABERT

1 A Yes.

2 Q Can you tell us what your understanding of
3 Ms. Whitehead's role was?

4 A She worked for the state. And what she did was she
5 monitored us every month and looked at all of our paperwork,
6 everything that we were doing, physicians and nurses, and kind
7 of giving us feedback on what we could do better.

8 And I talked to her all the time about our settlement
9 agreement. Some things I didn't understand in the settlement
10 agreement, and I would go to her and she would just, you know,
11 help me out and understand where things were at and policies,
12 or -- she was my go-to person to try to do better for
13 Fluvanna.

14 Q And then what would you do with the information you got
15 from Ms. Whitehead?

16 A Well, of course, it helped me understand, so then it
17 helped me be better as a leader, to go back to my nurses and
18 say, you know, we are doing this wrong. Let's, you know,
19 correct this. You know, like, they would miss dates and
20 times, and I was like, you know, you have to make sure you
21 have dates and times and that kind of thing.

22 Q Were you at any point in time during your period at
23 Fluvanna responsible for training of nurses?

24 A I was.

25 Q Can you tell us a little bit about how that training

DIRECT EXAMINATION OF BARBARA SEABERT

1 would work?

2 A When I first started there, we didn't really have a
3 system of who was going where. So I actually made a chart,
4 and I had everybody's name on there, when their BLS was
5 needed -- was due, if they've had Sapphire training, if they
6 had Phase 1 and Phase 2 training, if they even had nursing
7 training that is called Nursing Skills that the state had
8 provided.

9 Once I did that chart, every week I sent it to the
10 warden and actually even made a list of who was going to go to
11 classes and when. And I stuck to that, to that regimen. And
12 a lot of times I worked 80, 90 hours a week to make sure those
13 nurses went to that training. I worked days, I worked nights,
14 just to get my nurses trained.

15 Q Did you have times where, due to staffing needs, you had
16 to postpone training for periods of time?

17 A I did, because the warden, the new warden that came in,
18 he was like, I would like to see everybody go through Phase 2.
19 Phase 2 was nine days long. It really didn't have anything to
20 do with nursing. It was more just how the state ran. And
21 that was nine days that we just didn't have.

22 We didn't have PRN nurses. We didn't have any
23 backup. It was just the nurses that were there. So it was
24 very hard for me. So a lot of times we did have to postpone
25 that Phase 2, but it really wasn't anything with nursing.

DIRECT EXAMINATION OF BARBARA SEABERT

1 Q Can you tell us a little bit about what was Phase 1 of
2 training?

3 A Phase 1 was more policy and procedures and a lot of the
4 roles that would go on with DOC; security, just how the prison
5 ran. There was some training in there with BLS, but we did
6 our own training.

7 Q What is BLS?

8 A Basic Life Skills. It's CPR.

9 Q Was there PREA training for the nurses?

10 A There was PREA training for the nurses. And they had to
11 do that before they came into the building.

12 Q What is PREA?

13 A PREA training is if the inmates say that they are
14 sexually abused or harassed.

15 Q And it teaches the nurses how to deal with that?

16 A Correct.

17 Q Any other training that they had to have before they
18 could start?

19 A They had a key class, which was how to have your keys
20 secured; you know, not just dangling on your side or, you
21 know, leaving them where somebody could pick them up. And
22 then it also had to do with security.

23 Q We were talking a little bit ago about Distarti Whitehead
24 and how you were meeting with her. Over what period of time
25 were you meeting with Ms. Whitehead?

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1 A Pretty much the whole time I was there. As a manager, I
2 didn't understand some of the settlement agreement. So I
3 would go to her. And then definitely I picked it up more when
4 I was DON, just always asking her for help.

5 Q So this started in May of 2016 and continued up through
6 shortly before you left?

7 A Correct.

8 Q And then when you were managing this training, creating
9 this training chart, when was that happening?

10 A I started that, like, January of 2017, right after I
11 became DON.

12 Q And you maintained that up through the time until right
13 shortly before you left?

14 A I did.

15 Q Did you ever have to fire people?

16 A As DON I would always contact HR to make sure that I did
17 the appropriate steps, and I would always go through the HSA.
18 And then I would also call Mr. Hatcher, and we would as a team
19 decide what was the best disciplinary action.

20 Q Were there some nurses who came and this just wasn't the
21 right environment for them?

22 A Yes.

23 Q Do you remember --

24 MS. GRIGGS: Your Honor, may I have a moment?

25 BY MS. GRIGGS:

DIRECT EXAMINATION OF BARBARA SEABERT

1 Q I'm just going to ask you if you remember a nurse. I'm
2 not going to use her name.

3 Do you remember a nurse who where you were called to
4 the warden's office to discuss some incidents that happened
5 related to her care? She was an agency nurse.

6 A Your.

7 Q Can you tell us a little bit about that incident?

8 A She was an agency nurse that had only been there for a
9 couple weeks, and we had put her down in building six, which
10 was -- it was a very difficult building. There was a lot of
11 drug distribution down there. There were a lot of inmates who
12 had disciplinary. And it was just -- it was a building that
13 needed a strong nurse.

14 She had past experience in, you know, inmates in
15 prisons. But this just kind of took her a little bit over the
16 edge. She couldn't get the computer going well. She kind of
17 fumbled. The inmates were very rude and disrespectful to her.
18 And I think it just made her very nervous.

19 So when I came in that morning, as soon as I found
20 out that she had just had a lot of difficulties -- you know,
21 passing pills, trying to get on the computer -- I went down
22 there right away and helped her and got her up to speed.

23 Unfortunately, she had almost given the wrong dose of
24 insulin to an inmate, and that inmate caught it, and then of
25 course, you know, started screaming and yelling at her. And

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1 then we had went to the warden, you know, and we sat down with
2 her. And she explained herself, but she basically said right
3 to the warden, This isn't for me. It's just too chaotic.

4 Q And did she leave after that day?

5 A She did. She never came back.

6 Q As a supervisor, did you ever monitor activities of your
7 nurses on the Internet or any of the electronic access that
8 they had through the prison?

9 A I did. You know, inmates like to tell on each other.
10 And so, you know, I would always have my ears open and listen.
11 And if I had an inmate come to me and say, She is, you know,
12 on the computer and she is not helping me or that kind of
13 thing, I would go to that nurse. And I would say, What's
14 going on? You know, did something happen last night?

15 And I noticed it was continuous. So I had just
16 emailed and had asked people that monitor and said, you know,
17 Can you just -- here's four names. Can you tell me what they
18 are doing at night? And it came back that, you know, they
19 were watching Netflix and that they had YouTube on.

20 So I went back to those nurses and I said, Explain to
21 me. I have evidence. So they basically said -- one of the
22 nurses said, I watch Netflix because I'm ADHD, so I have to
23 have background noise, not just music because that gets on my
24 nerves, but if I have a movie playing, that helps me. And I
25 let it continue.

DIRECT EXAMINATION OF BARBARA SEABERT

1 I did block Netflix, but I let YouTube go on. So
2 YouTube had music and that kind of thing. Because sometimes
3 at night, it just helps, the stimulation, because it's not as
4 active as during the day.

5 Q And what sorts of things -- at nighttime, are they
6 starting to prepare sometimes for the next day?

7 A They work hard all night long. So as soon as they get
8 in, they take turnover, they do -- right away, it's pills and
9 treatment line, diabetic line. And then throughout the night,
10 you know, we have inmates that are, you know, saying they have
11 sinus colds or, you know, my ankle hurts, or something. And
12 so those nurses are always doing that. But then they are also
13 preparing the pills for 5:30 in the morning.

14 Q Let's talk a little bit about pill distribution. If a
15 nurse prepared the pills, who gave the pills?

16 A That nurse. We were very strict. If you pulled it, you
17 gave it. Even if they were sick, if they just had to leave in
18 the middle of their 12-hour shift, you know, for an emergency
19 or sickness or whatever, but -- and it would delay pill line
20 because, you know, we wanted to pull our own meds.

21 And sometimes what we would do if we didn't have time
22 to go back and repull them, so we would live pull, is what
23 it's called. We'd open up the door -- the inmate was in front
24 of us -- we would just pull them out and give them.

25 Q Did the live pulls move as fast as the prepulled?

DIRECT EXAMINATION OF BARBARA SEABERT

1 A Absolutely not. It took multiple hours.

2 Q To distribute to each inmate live took multiple hours?

3 A Yes, and they complained about that.

4 Q Tell me a little bit about crushing the meds.

5 A Well, we started noticing a lot of overdoses and a lot of
6 people being caught cheeking their meds, which means that
7 they'll put the pills up on their top cheek or underneath
8 their tongue or whatever they can to get those pills back out,
9 for whatever reason. I don't know. So we came together as a
10 management team for psych, and then also our management, our
11 providers, and we just said, We have to do something. We
12 don't want these ladies to hurt themselves or even die. So we
13 decided that we would go through the individual meds and we
14 would crush the ones that the providers told us to.

15 It was a pushback. The inmates didn't want that.
16 They wanted their meds not crushed, for reasons, but we stayed
17 strong and we said, No, we will crush the pills.

18 Q So you mentioned that you became director of nursing
19 December of 2016; is that right?

20 A Correct.

21 Q How was staffing at that time?

22 A It was staffed. We had -- we were fully staffed.

23 Q But you still thought there were some of these morale
24 issues related to having the nurses out in the individual
25 units?

DIRECT EXAMINATION OF BARBARA SEABERT

1 A Absolutely.

2 Q Do you recall the L-card system?

3 A I do.

4 Q Can you tell us a little bit about the L-card system?

5 A Well, we had DOC always monitoring our meds, and they
6 were always trying to help us, you know, to reorder them
7 correctly and on time. And because we had so much in and out
8 of our nursing with people quitting or new people coming in or
9 agency nurses, they had suggested the L-card system.

10 So the L-card system basically is if they got 60
11 days' worth of meds, that second card, you would actually
12 circle when it needs to be reordered. And then you would put
13 up their, you know, reorder, basically. And that really
14 helped. It reminded the nurses that, hey, these ladies are on
15 this type of whatever medication, and to reorder.

16 Q When did that go into place? Do you remember?

17 A In the summer of last year.

18 Q And who was responsible for putting that in place?

19 A Pretty much Armor did, and then our pharmacy lady who had
20 been there 20 years.

21 Q Is that Ms. Wood?

22 A Ms. Wood.

23 Q Do you know a Nurse Sapien?

24 A I do.

25 Q Who was Nurse Sapien?

DIRECT EXAMINATION OF BARBARA SEABERT

1 A Nurse Sapien was hired last year, early last year, to look
2 at our grievances. We had a tremendous amount of grievances,
3 and she would go through every single one of them, pull their
4 charts. And if it was something significant, she would either
5 give it to me or the HSA or even the provider.

6 Q So she was hired early in 2017?

7 A Correct.

8 Q And then the L-card went in in the summer of 2017?

9 A That's correct.

10 Q At some point in time, were there changes made to -- and
11 I'm going to use the wrong word for this -- there were sort of
12 emergency pill boxes that you keep at the facility?

13 A We started noticing on Fridays, UVA would discharge a lot
14 of people back that we had sent out, and they would want an
15 antibiotic or they would want a Lortab or Percocet, which was
16 a narcotic, and they would send them back at 9:00 or 10:00 at
17 night. Well, nothing is open.

18 So we started to have pill boxes so when they came
19 back they could get their antibiotics or their narcotics. And
20 then we tweaked it along the way, and we started doing
21 emergency boxes for all the overdoses and -- for all the -- so
22 we would do Narcan and things like that, put it in the boxes
23 to help.

24 Q And when did those changes start to take place?

25 A We did that early on. We started noticing that, I would

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1 probably say -- well, actually, it started right when I came
2 in in 2016, May of 2016.

3 Q If you -- you mentioned that if an inmate came in at 9:00
4 at night, everything was closed. Where would you go if you
5 didn't have meds in the facility at night? Where was your
6 backup pharmacy where you would go?

7 A Well, Walmart, usually. Walmart closed at 9:00. And
8 then if not, we would -- as soon as they opened up that
9 morning, I would call the nurses. And on their way to work,
10 they would be waiting for it to open and bring that med.

11 Q Okay. What are man-down drills?

12 A Man-down drills were something that DOC had said twice a
13 year that we need to do. So, basically, that person would be
14 a trauma or near death. And they would make a skit and they
15 would do a drill. And so our nurses would go out and we would
16 find that patient and we would triage them and bring them back
17 and just go through that role of a trauma or a death.

18 When I became DON, I decided we needed more than just
19 twice a year. So I decided anytime that we had an emergency
20 overhead, that we would do that. But then I would make that
21 nurse go through that drill, that drill paperwork. And we got
22 better, how to make sure that we had oxygen go in there and
23 our bags were packed and full and our stretchers -- everybody
24 knew how to do the stretchers. So over time, our nurses were
25 fluent, and we weren't just doing it twice a year.

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1 Q You've mentioned a couple of times medical emergency.

2 Can you tell us what you mean by that?

3 A So a medical emergency is when an inmate feels like they
4 cannot -- it's an emergency. They cannot wait for the
5 provider. They do not want to put in a sick call. They want
6 to be seen right now by a licensed person.

7 So when that happened, we would have four minutes to
8 get to that inmate and assess and decide if they needed to go
9 back to the infirmary, provider, that kind of thing.

10 Q Did you monitor responses to medical emergencies?

11 A All the time. I couldn't go to every one of them, but I
12 would at least go to one every day.

13 Q And when you say you couldn't go to every one of them,
14 why wouldn't you go to every one them?

15 A Because sometimes we would have 10, 15 a day. And
16 sometimes the inmates felt like, let's call medical emergency
17 during shift change, or let's do it right before pill line.

18 Q As a nursing supervisor, did you ever come across
19 personality disputes between nurses?

20 A I did.

21 Q How would you handle that?

22 A First, it was an oral. I would bring them into my office
23 and say, you know, What's going on? Sometimes it was
24 something they didn't realize, and sometimes they realized,
25 you know, I'm starting to get jaded. The inmates are

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1 screaming at me constantly, and I just can't take it. So I
2 would try to say, Would you like to go to another building?
3 And sometimes that would work. I would put them in another
4 building and it was not so chaos, and it was a better fit for
5 them.

6 Q Did you see a lot of your job as being morale?

7 A Morale, and it really helped when I was out there, not
8 just in my office, but just out there helping the nurses any
9 way I could.

10 Q In addition to switching nurses in cases of personality
11 disputes, did you also move nurses around in other ways?

12 A I did. Once I started getting an idea of my job and
13 started to get to know my nurses, I started to see that some
14 nurses would do better in intake or discharge than sitting
15 behind a desk doing something else. Sometimes I had stronger
16 nurses. So I would put them in building three or building six
17 where it was a difficult building.

18 Q Did you end up, as part your role as director of nursing,
19 communicating with Dr. Scharff?

20 A All the time.

21 Q About what sorts of things?

22 A He would want to know -- he would ask me to go get charts
23 for him. So we would go get charts. He really was interested
24 in the infirmary. And I was in the infirmary all the time.
25 So he would ask me about certain inmates and if they were

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1 taking their pills on time or if they were -- you know, that
2 kind of thing if they were not doing the regimen that we asked
3 them to do.

4 Q Over the summer of 2017, what happened to nursing
5 staffing?

6 A Our vice president had resigned. My HSA resigned right
7 before her. I had two supervisors that got their bachelor's
8 degree and wanted to go into hospitals and do more nursing
9 than just prison. And so that took a huge blow.

10 I tried to keep it together, but I realized that I
11 needed to go to nights to keep night shift going. So in
12 August of 2017, I went to night shift and took over nighttime.
13 And I did that all the way up until I left.

14 Q So did that have any impact on efforts you had been
15 making to improve things for nursing at Fluvanna?

16 A I think so. Because nobody during the day ever saw me,
17 and it just seemed like there was no management there to help
18 them. We did bring in some other people, but they didn't stay
19 long.

20 Q Okay. So there were continuous efforts to bring in more
21 management so you could go back to your --

22 A All the time.

23 Q But they were unsuccessful?

24 A Correct.

25 Q We've heard some talk about a nursing crisis by

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1 Dr. Scharff. Was that the nursing crisis that you're -- your
2 understanding of what he was referring to as a nursing crisis?

3 A He sat down with me one-on-one and told me that I would
4 burn out, that I couldn't continue what I was doing, which was
5 80, 90 hours a week.

6 Q Did you ever talk to Dr. Scharff about CQI?

7 A He is actually the one that said he didn't like how
8 Ms. Whitehead was doing that. He felt like we were behind.
9 He wanted CQI to where we were ahead, we could see things in
10 the forecast. And the way DOC had it, we were looking at
11 things afterwards. So he said that we needed to start a
12 committee, which we did. And then we also -- DOC had hired a
13 full-time CQI guy.

14 Q And when did that happen?

15 A Summer, summer of 2017.

16 Q During the nursing crisis, did you ever have any
17 discussions about expanding the agencies from whom DOC was
18 seeking nursing support?

19 A Yes, and we did. We only had three agencies, and by the
20 time we -- when I left, we were up to, like, eight or nine.

21 Q And this would give you other opportunities to recruit
22 nurses to help out?

23 A Yes.

24 Q By the time you left, were you still working nights?

25 A Yes.

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1 Q So there hadn't been -- they hadn't been able to find
2 management staff to get you back to your director of nursing
3 activities?

4 A That's correct.

5 Q What was your reason for leaving Fluvanna?

6 A It was more of a family issue. It was putting a lot of
7 toll on my family, working 80, 90 hours a week and always on
8 nights. I have two small kids, and so it took a toll on them.
9 And when they started saying, Mom, we never see you, their
10 grades started going down, I needed to find something else.

11 Q Where are you working now?

12 A I'm working at Martha Jefferson Hospital as a cath lab
13 nurse.

14 MS. GRIGGS: Court's indulgence, Your Honor.

15 That's all the questions I have at this time,
16 Ms. Seabert. They may have some questions for you.

17 **CROSS-EXAMINATION**

18 BY MS. ELLIS:

19 Q Good morning, Ms. Seabert. It's nice to see you again.

20 A Good morning.

21 Q I only have a few questions for you today. You have
22 described your very intense work schedule during the last six
23 months of your time at Fluvanna.

24 A It was actually the whole time I was there. I would
25 stay, come in at midnight, 2:00 in the morning, whatever it

CROSS-EXAMINATION OF BARBARA SEABERT

1 took.

2 Q So you covered a lot of shifts for nurses that didn't
3 show up. Correct?

4 A Not show up; more like call-ins.

5 Q Call in to say that they weren't going to come to work
6 that day?

7 A That's correct.

8 Q Okay. And I believe you worked numerous 16-hour shifts
9 while you were at Fluvanna?

10 A It could go up to that. I would work nine hours, go
11 home, eat dinner, get a shower, and come back in.

12 Q And there were other nurses that worked similar shifts at
13 times?

14 A I had a lot of my nursing staff that were just right
15 along with me. Once they seen that I was doing that, they
16 picked up and started doing it, too.

17 Q You talked about your recommendation that Fluvanna look
18 beyond the three nurse agencies. And I believe you said you
19 made that recommendation back in August 2017?

20 A I can't remember the exact time, but I do know that we
21 were constantly looking for other agencies.

22 Q And you said that Fluvanna did end up going to additional
23 agencies. But that didn't happen until early 2018. Correct?

24 A With all the management changes, that did set us back.

25 Q And you talked about your recommendation that -- for

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1 reorganizing how the nurses were moving them from the
2 buildings back to building two. And I believe you said you
3 recommended that in August 2016. Correct?

4 A It was about that time.

5 Q And that change did happen, but like with the other one,
6 it took a while. Right?

7 A Correct.

8 Q In fact, that relocation did not happen until early 2018?

9 A Actually, until we got the state ladies in there, and
10 they thought it was a fabulous idea.

11 Q And that happened around January or February of 2018?

12 A Correct.

13 Q During the time that you were working night shifts from
14 around August 2017 to February 2018, your duties really
15 changed from being able to supervise the nurses and have that
16 managerial role to more of the role of, like, a line nurse.
17 Correct?

18 A No, I actually did both. I was still doing emails. I
19 was still trying to make meetings in the morning. I was still
20 doing the staff meetings every month. I was still trying to
21 make sure that everybody got their CPR every month and never
22 had expired.

23 I also kept in contact with the lady that did all the
24 drugs, drug testing. And I got emails weekly of people with
25 Suboxone overdoses or Suboxone in their urine. So I would

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1 have to go through their charts and look at all their
2 medications and make sure that wasn't a false positive.

3 Q And I -- let's see. I'm pulling it in here, but this is
4 not showing up.

5 I apologize. During the time that you were working
6 nights, you weren't present at the facility during the day.
7 Correct?

8 A Correct.

9 Q And so you stopped participating in interviewing
10 candidates for nursing positions at Fluvanna?

11 A I did. I turned that over to the lady that was working
12 during the day.

13 Q And before you went to the night shift, you interacted
14 with the warden almost daily. Correct?

15 A In passing, saying hi, seeing him at lunch. But he would
16 only have meetings with us weekly.

17 Q And after you went to nights, that fairly regular contact
18 dropped off?

19 A I was still making sure I said good morning to him as I
20 left work. But yes, those meetings with him did -- I turned
21 that over to another nurse -- well, another manager.

22 Q I'm sorry. The Court's indulgence for just a moment.

23 Ms. Seabert, do you recall coming to Legal Aid? I
24 believe you actually had to come twice to conduct your
25 deposition in this case?

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1 A Correct.

2 Q And do you remember describing the difference between
3 your duties when you were on day shift and you were on night
4 shift and saying, "While I was on day shift, I was just a
5 manager or the director. I wasn't in patient care; I was
6 actually their boss. But when I went nights, I was actually
7 just -- I was the nurse"?

8 A That's the way I felt when I talked to you, because I
9 felt like I had lost a lot of my -- what I was hired for.

10 But now that I look back on it, I was actually doing
11 supervisor manager work at night also as being a health care
12 provider for the inmates.

13 MS. ELLIS: Thank you very much, Ms. Seabert.

14 MS. GRIGGS: We have no redirect, Your Honor.

15 THE COURT: All right. Thank you. Appreciate it.

16 We will take about a ten-minute recess.

17 THE MARSHAL: All rise.

18 (Recess taken from 10:11 a.m. until 10:20 a.m.)

19 THE COURT: All right. Call your next witness.

20 MR. SCHNETZLER: Your Honor, the defendants call
21 Scott Dodrill.

22 MS. BAUER: Your Honor, Mary Bauer for the
23 plaintiffs. The plaintiffs just merely want to restate that
24 we had filed a motion to exclude this witness, and we won't
25 reargue that here, but we wanted to just establish that we

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1 have an ongoing objection to that.

2 **DAVID SCOTT DODRILL, DEFENDANT'S WITNESS, SWORN**

3 **DIRECT EXAMINATION**

4 BY MR. SCHNETZLER:

5 Q Good morning.

6 A Good morning.

7 Q Mr. Dodrill, would you please state your name for the
8 record.

9 A David Scott Dodrill, D-O-D-R-I-L-L.

10 Q And Mr. Dodrill, how are you currently employed?

11 A I'm self-employed. I retired from my old job at the end
12 of 2010.

13 Q And in your self-employment, what do you do?

14 A I run a consulting business. I do -- I have contracts
15 with different agencies or companies to provide services as
16 far as prison management or auditing purposes for different
17 facilities.

18 Q And, Mr. Dodrill, how did you first get involved in the
19 field of corrections?

20 A I have been in and out of prison since I was three years
21 old.

22 Q What do you mean by that?

23 A When I was three years old, my father was named deputy
24 warden at the maximum security prison in Moundsville, West
25 Virginia. And his apartment, the apartment for the deputy,

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1 was the third and fourth floor of the administration building.
2 So my bedroom literally looked out on the main yard. I could
3 see the basketball court, the little bandstand, the laundry;
4 even the execution chamber, even though I didn't know that's
5 what it was at the time.

6 Q And did you have interactions with the offenders during
7 that time?

8 A Inmates cooked for me, baby-sat me, taught me how to play
9 baseball.

10 MR. SCHNETZLER: May I approach the witness, Your
11 Honor?

12 BY MR. SCHNETZLER:

13 Q Mr. Dodrill, I have just handed you a document that I
14 would like to mark for identification purposes as Defendant's
15 Exhibit 34.

16 Mr. Dodrill, can you tell me what that document is?

17 A That's my CV.

18 Q Okay. And is that current up to today?

19 A Yes.

20 MR. SCHNETZLER: Your Honor, we would like to move
21 Mr. Dodrill's CV into evidence.

22 MS. BAUER: No objection, Your Honor.

23 THE COURT: It will be admitted.

24 (Defendant Exhibit Number 34 was marked and received.)

25 BY MR. SCHNETZLER:

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1 Q Mr. Dodrill, I would like to briefly go through your
2 experience leading up to your current self-employment.

3 What was your first position in the field of
4 corrections?

5 A I joined the Federal Bureau of Prisons in January of 1978
6 at the federal correctional institution in Memphis, Tennessee,
7 as a corrections officer.

8 Q And did you eventually move up the ranks in the Bureau of
9 Prisons?

10 A Yes. I moved 13 different times when I was with the
11 federal prison system and each time getting more
12 responsibility in my positions.

13 Q Mr. Dodrill, after you served as a correctional officer,
14 what other management positions did you hold within the
15 Federal Bureau of Prisons?

16 A I went up into correctional services to the lieutenant,
17 captain, which is chief of security. And then I went to a
18 regional office as the correctional services administrator for
19 that region in Atlanta, which means I had the training and
20 oversight for the -- or guidance to the correctional services
21 department of the 15 institutions that were in that region.

22 Then I became AW at a couple of institutions, and I
23 became warden at two facilities, and I became regional
24 director in the northeast region in Philadelphia. There were
25 18 institutions in that region. And then I was named

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1 assistant director of the correctional programs division in
2 Washington, DC, and that's where I retired from.

3 Q And I want to step back to your time serving as a warden.
4 Could you tell the Court the first facility you served as a
5 warden?

6 A It was at a LSCI, Butner, North Carolina. It's a low
7 security correctional institution in Butner, North Carolina.

8 Butner is a complex. There is a hospital there.
9 There's two medium security institutions and a low. At the
10 time I was there, the medium wasn't there, but there is a
11 medium now. The low and the medium served as
12 step-up/step-down facilities for the hospital. As offenders
13 were getting ready to go in for some type of procedure, they
14 would come to our institutions, depending on their security
15 level, and when they got done they would come down and
16 recuperate in our facilities.

17 Q You've mentioned a hospital. What kind of interactions
18 did you have with staff in the hospital at Butner?

19 A Well, it was daily. The three wardens, we met. We were
20 in constant contact with each other, and our staffs were going
21 back and forth. In fact, we shared associate wardens. If
22 they had responsibility for medical, they had responsibility
23 for medical in all three facilities. And if they had
24 responsibility for education, for example, they had
25 responsibility at all three facilities. So all the staff was

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1 kind of wandering back and forth at all times.

2 Q And about how many offenders were housed at the low
3 security facility at Butner when you were there?

4 A 1,000.

5 Q After you were warden at Butner, which facility did you
6 move to?

7 A To the United States penitentiary in Lewisburg,
8 Pennsylvania.

9 Q Could you just briefly explain to the Court what the --
10 sort of the number of offenders at the facility at Lewisburg
11 are?

12 A Lewisburg was maximum security. We had 2,000 offenders
13 there. Some of those were out in the outside camp, but the
14 majority were inside.

15 Q Were there any type of medical facilities at Lewisburg?

16 A We had the basic infirmary that every other institution
17 would have.

18 Q And how does the Bureau of Prisons deliver medical care
19 inside the facilities? Do they use outside contractors?

20 A No. The Bureau of Prisons has their own medical at all
21 the facilities. There is no contract medical.

22 Q They are federal employees?

23 A Federal employees, full-time employees. Now, they do
24 contract out specialties at the different institutions, but
25 most of the time they have full-time staff at their

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1 facilities.

2 Q After you served as a warden at Lewisburg, I believe you
3 mentioned that you became a regional director. Could you sort
4 of describe for the Court what your main roles were as a
5 regional director for the northeast region for the Bureau of
6 Prisons?

7 A In Philadelphia -- that's the northeast region -- I was
8 responsible for ten states. That's Ohio, Pennsylvania, and
9 New Jersey, and everything north. In those states, there's 19
10 federal institutions ranging from penitentiaries down to low
11 security.

12 We had one major hospital. That was in Fort Devens,
13 Massachusetts. We had one full female institution that was in
14 Danbury, Connecticut. We had three metropolitan detention
15 centers, and they would have females in those as well. Those
16 were offenders waiting for trial or just going back for
17 sentencing.

18 In the region, there was 19 institutions. I was
19 responsible for 6,200 employees; about 35,000, 36,000 inmates.
20 I had a budget of \$850 million a year.

21 Q And what were your primary duties as a regional director?

22 A I supervised the wardens. We also had a regional office
23 in Philadelphia; 100 employees there. We also had halfway
24 houses throughout the -- throughout those ten states in
25 different areas.

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1 Q Did you also conduct any inspections or audits of the
2 facilities under your supervision?

3 A I wouldn't do audits. I would -- I would tour each
4 facility at least annually, going through and meeting staff
5 and observing the institutions.

6 Every three years, we did what we called an
7 institution character profile, and that's where I took about
8 ten staff from the region and we went down in there in the
9 institution and did the deep dive into all aspects of it. As
10 long as it was good, it was every three years; if it was not
11 good, we would come back sooner.

12 Audits were done out of the central office, and they
13 were on a different time frame, from one to three years,
14 depending on how the audits were.

15 Q You mentioned a deep dive into the facility. What did
16 you mean by that?

17 A Institution character profile. We interviewed offenders
18 while we were in the facility. We interviewed staff. We went
19 into each area of the facility and looked down to see exactly
20 how it was operating. You know, if they -- it wasn't the
21 basic audit steps. We were going down at the basic level and
22 seeing how the operations were, checking on the attitude of
23 the facility, interaction between staff and offenders, all
24 aspects of it.

25 In fact, we even went into the community and talked

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1 to the community leaders about the relationship that they had
2 with the facility.

3 Q And I believe you mentioned that some facilities you
4 would only need to visit once every three years, but would you
5 have to visit others multiple times?

6 A No. We would go to every facility at least once every
7 three years with this deep dive. I was in every facility
8 annually, at least annually. Some of them, unfortunately,
9 were closer to me. I had a detention center three blocks down
10 the street. So they were unfortunate enough to see me more
11 often than some of the others.

12 Q All right. Thank you. And after you served as a
13 regional director, you stated you became the assistant
14 director of correctional programs. What were the
15 responsibilities in that position?

16 A That was the -- at the time, that was basically the
17 number two position in the agency, because it's the one that
18 had most of the bulk of what occurs in the institution. All
19 the security in all the 116 institutions at the time I left
20 fell under me. Programs, substance abuse, mental health,
21 psychology, counterterrorism, gangs, all that fell -- reentry,
22 all that fell under the correctional programs division. So I
23 had a large impact on the institutions.

24 In my position, we wrote policies for those areas.
25 We also developed training and saw that that training was

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1 conducted. Things of those natures -- things of that nature.

2 Q And were you still going into facilities at that time?

3 A Yes, but I didn't have any real responsibilities for any
4 facility except for the administrative max out in Colorado,
5 which is the supermax for Bureau of Prisons. I had to go out
6 there quarterly to have hearings on offenders that were in
7 there to see if they could be cut loose or we were going to
8 keep them in there longer.

9 Q And I believe you said you were the number two position.
10 Does that mean you were directly under the director of the
11 Bureau of Prisons?

12 A I was directly under the director. It was basically
13 number two. We had several assistant directors, but that one
14 was always considered more important and was designated as the
15 number two position. Now they have a deputy director. So
16 that position is number two.

17 Q And in your role of -- in your current role as a
18 consultant, what types of consulting -- in terms of working
19 with facilities, how will you go about doing your consulting?

20 A I have a small contract with a management and training
21 corporation which runs some private prisons. I do some work
22 for them; regularly, actually, I do some work for them. They
23 have 24 or 25 private prisons they operate in right now. So I
24 do audits for them or different things that they would like to
25 have looked at. I go into those different facilities. They

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1 have some federal contracts. They have some immigration
2 contracts. They have contracts with Mississippi, Ohio, Idaho,
3 Arizona, Texas, off the top of my head, Florida.

4 Q And you've also worked in some state-run facilities as
5 well?

6 A Those are all state. The states I mentioned were
7 state-run facilities that had been contracted out for
8 management by MTC. The federal contracts are with the Bureau
9 of Prisons, Marshals and ICE.

10 Q And are you still going into those facilities in your
11 role as a consultant?

12 A Yes.

13 Q About how many facilities do you think you have been
14 inside in your entire career in the field of corrections?

15 A I have been in hundreds of facilities, not only in this
16 country but in other countries.

17 MR. SCHNETZLER: Your Honor, at this time I would
18 like to offer Mr. Dodrill as an expert in the field of
19 corrections operations and administration.

20 MS. BAUER: Your Honor, as we have argued, we don't
21 doubt that Mr. Dodrill has expertise, but we do contest that
22 any of the opinions that he has listed in his report are
23 appropriate as an expert.

24 THE COURT: All right.

25 BY MR. SCHNETZLER:

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1 Q Mr. Dodrill, you have given some opinions in this case
2 regarding the operations and administration of Fluvanna
3 Correctional Center for Women; is that correct?

4 A That's correct.

5 Q What did you base your opinions on? What did you do to
6 arrive at those opinions?

7 A I toured the facility in March. I think it was the 26th
8 and 27th. I looked at their policies that I was asked to look
9 at. And I reviewed the settlement agreement.

10 Q Did you have any meetings with staff while you were
11 visiting the facility in March of this year?

12 A Yes.

13 Q Who all do you remember meeting with during your visit to
14 the facility?

15 A I remember I met with the warden. I met with
16 Mr. Wilkinson, who was the CQI at the time. A couple people
17 in the hospital or infirmary. There were other people I can't
18 remember at this time. There was a bunch of attorneys.

19 Q Did you meet with anybody in charge of scheduling or
20 transporting offenders to off-site medical treatment?

21 A Ms. Shiflett, who was in the medical department. April
22 Shiflett, I believe. I did have a meeting with her.

23 Q And did you meet with any correctional staff that were
24 involved in transportation for off-site medical visits?

25 A I met with Lieutenant Burrows.

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1 Q In addition to the settlement agreement and the
2 Department of Corrections policies and procedures that you
3 mentioned you reviewed, did you review any other documents in
4 coming to your opinions in this case?

5 A There are some logs I looked at from different areas,
6 transportation logs, as well as some grievance logs.

7 Q Did you also review the reports of the compliance monitor
8 in this case?

9 A I did.

10 Q And did you review the reports of the experts that were
11 retained by the plaintiffs in this case?

12 A Not all of them. I read Dr. Scharff and -- the name
13 escapes me. It starts with a G.

14 Q Dr. Greifinger?

15 A Dr. Greifinger. I read his reports.

16 Q All right. Thank you. And in coming to your opinions in
17 this case, did you base those on your 40 years of experience
18 serving in the -- for the Bureau of Prisons?

19 A I served with the Bureau of Prisons for 33. But I have
20 been doing correctional stuff since then. So that's, yeah, 40
21 years.

22 Q Thank you for correcting me. I apologize.

23 And in arriving at those opinions, could you explain
24 to the Court how that experience in the field of corrections
25 helps you arrive at an opinion of the operations of a

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1 correctional facility?

2 A Would you say that again, please?

3 Q Sure. When you are arriving at your opinions based on
4 your experience in the field of corrections, is that based on
5 your interactions with offenders over the last 40 years?

6 A Yes. Interaction with offenders; interaction with staff;
7 going into various kinds of facilities at all times of the
8 day.

9 Q Is that also based on your role as a supervisor in
10 dealing with facilities that have run into issues in terms of
11 their operations?

12 A Yes.

13 Q Would you -- are you familiar with a federal correctional
14 facility in Talladega, Alabama?

15 A Yes.

16 Q Was that a facility that experienced some issues while
17 you were a supervisor with the Bureau of Prisons?

18 A Yes. Talladega opened in the early '80s, about, and had
19 problems from the get-go of not having the right combination
20 of staff, not trending well. All their audits were not good.
21 They were poor. They had two inmates escape through their
22 rear gate, and escapes from federal custody is rare. They had
23 an inmate starve to death in restrictive housing, an inmate
24 that died on one of their buses because of misconduct by their
25 staff.

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1 It's just -- everything was always happening at
2 Talladega. This was going on for several years even though
3 the Bureau of Prisons was trying to send in new supervisors,
4 new administration, trying to get it right to where it would
5 straighten itself out. But that takes years, and through this
6 time, staff didn't want to go in there. You didn't want to be
7 promoted in there. You didn't want to lateral in there. You
8 didn't want to go in there and work, because it had a cloud
9 over its head. People thought it would be bad for their
10 career to go in there.

11 So it takes -- you have got to get good
12 administration in there who can convince some midline
13 supervisors and department heads that are good ones to go in
14 there, and then they start training the staff right.

15 If you just throw staff and money at a problem, if
16 it's going bad now, all those bad staff are just going to
17 train other staff on how to do bad things. So you've got to
18 start at the top and work your way down and get it right. And
19 it took until the mid-'90s before they were able to get that
20 right.

21 The institution finally turned around and all their
22 audits were going well. Their character profiles were fine.
23 They haven't had any issues, as far as I know, since then,
24 since that time. But it takes a long time to do that. You've
25 got to convince staff to get on board with the program of

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1 doing things the right way.

2 Q And do you recall when about that time frame was when you
3 were dealing with those issues?

4 A It was -- it opened in the early '80s. I don't know
5 when. And I was in the regional office from '90 to '94.

6 Q And were you dealing with those issues throughout your
7 time in the regional office?

8 A Yes.

9 Q And what was it that eventually turned Talladega around
10 while you were in the regional office?

11 A I think it was just getting the right staff. They got a
12 good warden in there, and they got my old boss to go in there
13 as associate warden. He had a lot of credibility with staff
14 in the field, and he was able to convince some midline
15 supervisors to go in. And then they started training the
16 staff to do things the proper way.

17 Q There has been a lot of testimony so far in this case
18 about the -- changing the culture within a facility. And I
19 believe you have used an analogy about changing the culture.
20 What's that analogy?

21 A It's like driving a cruise ship. I don't care how hard
22 and fast you turn that steering wheel, it takes a while before
23 that boat -- before it starts making the move in the right
24 direction. And that is like doing an institution.

25 Management isn't -- there is no all-encompassing,

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1 perfect way of managing anything. If there was, there
2 wouldn't be all these books out there. Every time you go to
3 the bookstore, there's a book on how to be a better manager or
4 more effective manager or more cost-effective manager.

5 It's a -- you make a decision, and that decision
6 isn't always right. And you have got to make changes from
7 that decision. And eventually, you get it going in the right
8 direction to where you want it.

9 Q In that cruise ship analogy, does the ship ever go
10 off-course while it's trying to turn?

11 A The ship is already off-course, and you are trying to get
12 it back on the right direction. It doesn't -- when you turn,
13 it doesn't go straight back that way. It slowly makes a turn,
14 as long as you keep turning the steering wheel. If you let
15 off that steering wheel, it's liable to go back the wrong way
16 again.

17 Q Looking back again -- I know we have talked about your
18 experience with Talladega and turning that facility around.
19 When there are issues at a facility, do things tend to -- when
20 things start going bad, does it -- do they go bad quicker than
21 it takes to course-correct, so to speak?

22 A I think it gets out of line slowly. And that's a big
23 responsibility of doing audits and getting in the institution
24 and reviewing it, because when things are going smoothly, it's
25 like this. They're going by policy and everything is going

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1 along fine.

2 But then when they start deviating from doing things
3 the right way, they start getting off-line, and if you let
4 them get too far off-line, it takes a long time to get them
5 back to where they are supposed to be.

6 If it goes along like this and they start getting off
7 and you're doing your audits and your proper stuff and you're
8 monitoring the institution, you just knock them back down to
9 where they are supposed to be. It's like playing
10 whack-a-mole. When they get off-line, you knock them back
11 down and do it in a line. If they get off again, you knock
12 them back down. You get them to do it the right way at the
13 right time.

14 Q And I believe you have mentioned getting the right people
15 in the right place. Would you talk about your experiences in
16 hiring in the field of corrections?

17 THE COURT: Look, we're almost 30 minutes into this
18 witness, and if he has opinions about this case, I'd like to
19 get to them.

20 MR. SCHNETZLER: Your Honor, they've continued their
21 objection on the basis of the 703 issue, Rule 703, that
22 whether or not it's proper experiential expert testimony. I'm
23 just trying to lay the foundation for that.

24 MS. BAUER: Your Honor, that is not accurate. We
25 accept that Mr. Dodrill has expertise. We contend that none

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1 of the opinions in his report are true opinions that an expert
2 can render.

3 MR. SCHNETZLER: I misunderstood their objection,
4 Your Honor. Excuse me. I will move it along.

5 BY MR. SCHNETZLER:

6 Q Mr. Dodrill, you have offered an opinion. Could you
7 please talk about the interplay between security and other
8 components of running a facility?

9 A All components in a facility have to work together. They
10 are all intermeshed. You know, there's still -- just like a
11 small city, a prison is just like a small city. It has the
12 same problems as a small city. It has the same things going
13 on. It has a church. It has a store. It has education. It
14 has a hospital. All that goes on. But because it's a prison,
15 you have to have the -- the security aspect is always there.
16 Security is always involved in everything.

17 Q Mr. Dodrill, with respect to that, how does security
18 interplay with the medical at Fluvanna Correctional Center?

19 A The same way it does at every other correctional
20 facility, in that you have staff in the medical, in the
21 infirmary, checking people in and out. It was mentioned
22 earlier that somebody is going to have to check to make sure
23 they are taking their medication, and they're not --

24 THE COURT: Excuse me. This is not the first day of
25 this trial. I mean, this case goes way back. A lot of this

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1 stuff, I mean, is not unknown. I mean, I have toured prisons,
2 too, but -- I have some familiarities. But the question right
3 here -- we are looking at this prison, and in the time -- in a
4 certain time frame. And that's --

5 MR. SCHNETZLER: Yes, sir, Your Honor. Right to it,
6 then.

7 BY MR. SCHNETZLER:

8 Q Mr. Dodrill, are you familiar with the practice of a
9 centralized pill pass at Fluvanna Correctional Center for
10 Women?

11 A Yes.

12 Q In your opinion, is that an appropriate way to pass
13 medication in a correctional facility?

14 A Yes.

15 Q Why is that appropriate?

16 A It keeps the medication in one location for
17 accountability and for consistency and documenting what's been
18 taken and what's not.

19 Q And Mr. Dodrill, is a centralized pill pass a process
20 used by the Federal Bureau of Prisons?

21 A Yes.

22 Q Okay. Thank you. Mr. Dodrill, are you aware of how
23 medications are administered to inmates that are in segregated
24 housing at Fluvanna Correctional Center for Women?

25 A Yes.

DIRECT EXAMINATION OF DAVID DODRILL

1 Q How is that done, typically?

2 A They take the medication from centralized pill line over
3 to restrictive housing and dispense it there.

4 Q Mr. Dodrill, do you have an opinion as to whether it is
5 proper to administer medication through the food port to an
6 inmate in segregated housing?

7 A It's not the optimal way do it, but it is acceptable.

8 Q Why is it acceptable?

9 A You only have so many staff. You start opening every
10 door, you have to restrain every inmate and open every door,
11 that staff member is there with you. And he is not getting
12 his recreation done. He's not getting his showers done. He's
13 not getting hearings done. He's not getting the place cleaned
14 up.

15 So if you had plenty of staff where you could escort
16 every inmate to a triage area and dispense the medication,
17 that would be great, but that doesn't happen in any facility I
18 know. It's always done through the pills -- the food slot.

19 Q Do you hold that same opinion with respect to diabetic
20 sticks through a food port?

21 A Again, that's not the optimum way to do it, but yes.

22 Q Is that a practice that is used by the Federal Bureau of
23 Prisons?

24 A Yes.

25 Q Mr. Dodrill, are you familiar with the grievance

CROSS-EXAMINATION OF MR. DODRILL

1 procedure at Fluvanna Correctional Center for Women with
2 respect to rejected medical grievances?

3 A Yes.

4 Q What is your opinion with respect to that procedure?

5 A I think they have gone the extra mile when they are
6 responding to rejected grievances. I have never seen
7 anybody -- once an administrative remedy is rejected, it's
8 gone. I have never seen anybody go back and pull them out and
9 still address them.

10 Q So it is your testimony you're not aware of any other
11 facility in the country that is using that type of grievance
12 procedure?

13 A I have never seen it.

14 Q Would you characterize that as cutting-edge with respect
15 to grievance procedures and policies?

16 A It's going the extra mile.

17 MR. SCHNETZLER: Thank you, Your Honor. No further
18 questions.

19 **CROSS-EXAMINATION**

20 BY MS. BAUER:

21 Q Nice to see you again, Mr. Dodrill.

22 A You too.

23 Q I want to go through briefly the basis for each of the
24 objections -- each of the opinions that you rendered in your
25 report.

CROSS-EXAMINATION OF MR. DODRILL

1 You had an opinion with regard to whether corrections
2 and security were interdependent. On what did you rely to
3 render that opinion?

4 A My experience of being in and out of institutions for 40
5 years.

6 Q You didn't rely on any documents to render that opinion,
7 did you?

8 A No.

9 Q And when asked what degree of certainty your opinion is
10 based upon, you indicated simply that you were adamant; is
11 that correct?

12 A Yes, I did.

13 Q Okay. You also -- I'll skip that. Excuse me.

14 You spoke about the pill line and the food port. You
15 have no medical training, do you, Mr. Dodrill?

16 A I do not.

17 Q And you are not rendering any opinion as to whether those
18 processes at Fluvanna are medically appropriate, are you?

19 A I am not.

20 Q In rendering the opinions that you wrote in your report,
21 you based this on a review of documents and conversations with
22 a handful of staff. Correct?

23 A Correct.

24 Q You did not speak with medical staff. Correct?

25 A Ms. Shiflett was in medical. I talked to her. There was

CROSS-EXAMINATION OF MR. DODRILL

1 one other person. I don't remember what her name was. No
2 extensive conversation.

3 Q And you did not rely on any conversations with
4 incarcerated women. Correct?

5 A That's correct.

6 Q Okay. You looked at the grievance system, as I
7 understand it, by reviewing some summary records of the
8 grievance system. Correct?

9 A Yes.

10 Q And you looked at six to eight individual grievances.
11 Correct?

12 A Recent grievances. Correct.

13 Q Is the number correct?

14 A Yes.

15 Q And that is despite the fact that you knew that there are
16 thousands of grievances filed at Fluvanna in any given year.
17 Correct?

18 A Yes.

19 Q And you said you reviewed about half regular and half
20 emergency grievances. Correct? That would have been about
21 three to four each; is that correct?

22 A That's correct.

23 Q And you did not review any informal complaints. Correct?

24 A That's correct.

25 Q And you know that filing an informal complaint is a

CROSS-EXAMINATION OF MR. DODRILL

1 prerequisite to filing a grievance. Correct?

2 A That's correct.

3 Q And you knew that Dr. Scharff had written about a
4 practice of people being pressured to withdraw informal
5 grievances. Correct?

6 A I knew there was an allegation.

7 Q And you did not investigate that in any way. Correct?

8 A I talked to the warden about it.

9 Q And the warden told you that he was looking into it.
10 Correct?

11 A The warden said he had heard the same allegation and he
12 was looking into it.

13 Q And based on the warden's representation, you did no
14 further investigation. Correct?

15 A That's correct.

16 Q When I showed you several individual grievance responses
17 in the deposition, you found many of the responses
18 inappropriate; isn't that correct?

19 A Lacking, yes.

20 MR. SCHNETZLER: Objection, Your Honor. This is
21 getting beyond the scope of direct. We didn't ask him about
22 the responses. We asked him about the procedure in general.

23 THE COURT: Overruled.

24 BY MS. BAUER:

25 Q And you were fully aware that in report after report,

CROSS-EXAMINATION OF MR. DODRILL

1 Dr. Scharff had indicated that there were significant problems
2 over time with the grievance system at Fluvanna. Correct?

3 A He said it was improving. At the last, the March report
4 I saw, he said there was good improvement in that area.

5 Q I don't believe you answered my question, Mr. Dodrill.
6 Were you aware that Dr. Scharff had repeatedly stated that
7 there had been problems with the grievance system?

8 A Yes.

9 Q And yet you continue to this day to believe that
10 reviewing six to eight grievances is a thorough investigation
11 of that system?

12 A It is an investigation, yes.

13 Q Thank you.

14 MS. BAUER: May I have a moment, Your Honor?

15 BY MS. BAUER:

16 Q Dr. Dodrill, there was a --

17 A I'm not a doctor.

18 Q Excuse me. I am aware of that. I'm sorry.

19 Mr. Dodrill, in your report and in your deposition
20 you stated that you believe all offenders are dangerous; is
21 that correct?

22 A All offenders need to be treated as being dangerous.

23 Q You didn't say that, did you, Mr. Dodrill? You did not
24 say they are potentially dangerous. You didn't say they had
25 the capacity to be dangerous. You said that all offenders are

REDIRECT EXAMINATION OF DAVID DODRILL

1 dangerous; isn't that correct?

2 A That's correct.

3 Q And you said that was true even if women were bedridden;
4 isn't that correct?

5 A That's correct.

6 Q And that is true even if they're in a wheelchair and
7 unable to walk?

8 A That's correct.

9 Q And that is true even if they have multiple sclerosis and
10 cannot move; is that correct?

11 A That's correct.

12 Q Is it true if a woman has already been pronounced dead?

13 A No.

14 MS. BAUER: I have no other questions, Your Honor.

15 THE COURT: Thank you. Any redirect?

16 MR. SCHNETZLER: I have redirect, Your Honor.

17 **REDIRECT EXAMINATION**

18 BY MR. SCHNETZLER:

19 Q Mr. Dodrill, you were asked just a few moments ago about
20 your opinion as to the interconnectedness of security in all
21 the components of a correctional facility?

22 A Yes.

23 Q And you said that was based on your experience?

24 A Yes.

25 Q And when counsel asked you if that was based on any

REDIRECT EXAMINATION OF DAVID DODRILL

1 documents, in your experience have you interviewed hundreds of
2 policies and procedures dealing with operations in
3 correctional facilities?

4 A Yes.

5 Q So is that part of your experience in coming to your
6 conclusion that security is interconnected with all components
7 of a correctional facility?

8 A Yes.

9 Q All right. And you were just asked a few moments ago,
10 are all offenders dangerous. Why are offenders dangerous?

11 A They have been convicted of a crime. So they have that
12 on their resume, so to speak. And the purpose of prisons is
13 to protect the community. So you have to treat them as if
14 they are dangerous to the community.

15 Q Does that also apply to other offenders?

16 A Yes.

17 Q And to facility staff?

18 A Yes.

19 MR. SCHNETZLER: Thank you. No further questions.

20 THE COURT: All right. Thank you. Is that all?

21 MS. BAUER: No.

22 THE COURT: All right. Next witness.

23 MR. McNELIS: Your Honor, the defense calls
24 Dr. Alfred Joshua.

25 MS. ABATO: Judge, just a brief housekeeping matter.

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 I just wanted to let the Court know that Director Clarke and
2 Chief of Operations Robinson are here in the courtroom today.

3 THE COURT: All right. Thank you.

4 **DR. ALFRED JOSHUA, DEFENDANT'S WITNESS, SWORN**

5 **DIRECT EXAMINATION**

6 BY MR. McNELIS:

7 Q Dr. Joshua, can you please state your full name and
8 professional address for the record?

9 A Sure. My name is Dr. Alfred Alexander Joshua -- last
10 name is J-O-S-H-U-A -- and I live in San Diego, California.

11 Q Dr. Joshua, what kind of a doctor are you?

12 A I'm a board certified emergency room physician.

13 Q If you could, just briefly tell the Court about your
14 education and training as an emergency room physician.

15 A Yes. So I'm a board certified emergency room physician.
16 Did four years of residency at University of California
17 San Diego. I went to a seven-year med program, graduated AOA,
18 or Alpha Omega Alpha, top 10 percent of my medical school at
19 SUNY Syracuse.

20 I also have a two-year hospital administrative
21 fellowship at UC San Diego. I have an MBA from the UC Irvine,
22 and I'm also certified as a Certified Correctional Health
23 Professional from the National Commission on Correctional
24 Health Care. And I also have the Physicians specialty
25 designation -- one of only 70 physicians in the country with

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 that designation -- from National Commission on Correctional
2 Health Care.

3 Q And Dr. Joshua, just to back up, you mentioned you did a
4 fellowship in hospital administration. Can you tell the Court
5 what means?

6 A So a hospital administrative fellowship is similar to
7 other fellowships for medical specialties on the
8 administrative side. The hospitals at many hospitals like
9 UCLA, Harvard, Cleveland Clinic, offer a hospital
10 administrative fellowship. UC San Diego offered it for MBA
11 and MPH graduates.

12 So you work with the executive team. You learn the
13 regulatory environment, the financials, the clinical
14 operations, as well as the clinical environment.

15 Q Dr. Joshua, what is your current position, sir?

16 A So I'm currently the chief medical officer for the
17 San Diego County Sheriff's Department.

18 Q Can you tell the Court what the -- what your
19 responsibilities are at the San Diego County Sheriff's
20 Department?

21 A Absolutely. So I oversee one of the largest jails in the
22 country. We have about 5,800 inmates a day, and of those
23 5,800 inmates, about 1,200 inmates are women at a facility
24 called Las Colinas.

25 We have about 90,000 bookings a year, which

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 translates to about 230 people a day. I oversee a budget of
2 about \$75 million for all the inmate care. I oversee 225
3 nurses, 171 RNs, or registered nurses, and 54 LPNs. I also
4 oversee pharmacists, mental health clinicians, administrative
5 staff, and have 19 contracts which span physicians,
6 psychologists, psychiatrists, and nurse practitioners. So I
7 provide all the clinical oversight for medical, mental health,
8 and dental programs in San Diego.

9 Q So you also employ contractors for various aspects of
10 health care within your medical system?

11 A Yes. So in our system, we have a hybrid model. So we
12 have about 307 medical employees, which the bulk of it is our
13 nursing staff. But we also have 19 contracts with probably
14 over another hundred contractors.

15 Q And how long have you been in that position with the
16 San Diego Sheriff's Department?

17 A Close to five years.

18 Q And how many individual facilities are -- do you oversee
19 the health care in?

20 A So I oversee, in San Diego, seven facilities. And
21 San Diego's county size is about the size of Connecticut.
22 It's about 4,500 square miles.

23 Q And you mentioned that there was a facility that was a
24 women's facility within your system. Can you tell us about
25 that?

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 A Yes. So we -- actually, it's a brand-new facility as of
2 a couple of years ago. It's called the Las Colinas Detention
3 Facility. It has a capacity of about 1,200 inmates, and our
4 census is typically about 1,000 inmates.

5 Q Let me ask you: Have you published in the area of
6 correctional health care?

7 A Yes, I have. I have published in -- related to
8 correctional health care, as well as emergency medicine.

9 Q And have you published textbooks in emergency medicine?

10 A Yes, I have.

11 Q And have you given lectures as an expert in correctional
12 medicine?

13 A Yes. So I have done a number of presentations at the
14 conferences for the National Commission on Correctional Health
15 Care. I'm frequently invited in San Diego, and other parts of
16 California as well, to speak on issues on mental health,
17 medical, but those are predominantly the areas.

18 Q Are you frequently sought out by the media to speak to
19 issues in correctional health care?

20 A Yes.

21 Q When is the last time you were approached by the media
22 about that issue?

23 A So just about two weeks ago I did, basically, a story for
24 CBS, the local news. But I also was on the newspapers for
25 *Union Tribune* on the reduction of opiates in our jails by

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 98 percent.

2 Q Let me ask you about consulting with respect to
3 correctional health care systems. Have you been retained as a
4 consultant to evaluate a correctional health care system?

5 A So as a result of some of presentations I've done and
6 some of the work I have published, I have been sought out by
7 various counties and even some states.

8 And one of the most recent work was with the County
9 of San Luis Obispo. Basically, they wanted to have someone
10 come in and do an independent assessment of their medical and
11 mental health operations and to provide a future model on how
12 to provide that care.

13 Q And did you provide those services?

14 A Yes, I did.

15 Q Have you been consulted on correctional health care
16 outside of the State of California?

17 A Yes.

18 Q Other than this case, obviously?

19 A Yes.

20 MR. McNELIS: Dr. Joshua, I would like to show you
21 what I will have marked as Defendant's Exhibit Number 35 for
22 identification.

23 Your Honor, I'm just trying to short-circuit the
24 foundation. Your Honor, may I approach the witness?

25 THE COURT: All right.

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 Did you have something?

2 MR. HOWARD: Your Honor, I just wanted to note,
3 similar to our approach with regard to Mr. Dodrill, that we
4 did file a motion to exclude Dr. Joshua's testimony not
5 because he is not qualified in general, but because we don't
6 believe he applied the particular methodologies employed by
7 experts in formulating his opinions in this matter.

8 THE COURT: All right.

9 MR. McNELIS: I would just like a chance to lay that
10 foundation, Your Honor.

11 BY MR. McNELIS:

12 Q Dr. Joshua, I'm going to show you what's been marked as
13 Defendant's Exhibit 35 for identification. Can you tell the
14 Court what that document is?

15 A That's my CV.

16 Q Is that a current and accurate curriculum vitae?

17 A I think everything -- let me just make sure. Everything
18 except for the media stuff from just two weeks ago.

19 Q So with -- other than the media stuff from two weeks ago
20 it's complete, accurate, and up-to-date?

21 A Yes.

22 MR. McNELIS: Your Honor, I would like to offer
23 Dr. Joshua's curriculum vitae into evidence as Defendant's
24 Exhibit 35.

25 MR. HOWARD: No objection.

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1 THE COURT: It will be admitted.

2 (Defendant Exhibit Number 35 was marked and received.)

3 MR. McNELIS: Dr. Joshua, I'm going show you -- if I
4 could have two more documents marked.

5 In an effort to move things along, Your Honor, I'm
6 going to mark some exhibits instead of asking lots of
7 questions.

8 I would like to have this document marked as
9 Defendant's Exhibit 36 for identification. And if I could
10 have this document marked Defendant's 37 for identification.

11 Approach, Your Honor?

12 THE COURT: All right.

13 BY MR. McNELIS:

14 Q Dr. Joshua, I'm going to present to you what I have had
15 marked as Defendant's Exhibits 36 and 37 for identification.
16 Are Defendant's Exhibits 36 and 37 for identification a
17 complete and comprehensive list of the materials that you have
18 reviewed to form your opinions in this case, sir?

19 A In terms of the materials, yes. In terms, I guess, of
20 the case, the *Clarke vs. Scott* deposition should be listed.

21 Q So you would add to what is on Exhibits 36 and 37?

22 A The deposition that was done.

23 Q Your deposition?

24 A Yes.

25 Q Okay.

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 MR. McNELIS: Your Honor, I would like to move into
2 evidence Exhibits 36 and 37 as the factual and informational
3 predicate for Dr. Joshua's opinion.

4 MR. HOWARD: No objection as to 36, Your Honor. As
5 to 37, I believe the record will reflect that a very
6 significant amount of information on this exhibit was reviewed
7 by Dr. Joshua after he rendered his report.

8 THE COURT: Okay.

9 (Defendant Exhibit Numbers 36 and 37 were marked and
10 received.)

11 BY MR. McNELIS:

12 Q Dr. Joshua, after you rendered your report, did
13 information in this case continue to come in?

14 A Yes, it did.

15 Q On a regular basis?

16 A Yes, it did.

17 Q On a daily basis sometimes?

18 A Yes.

19 Q And was it your understanding from looking at the
20 information that discovery in this case was ongoing every day
21 and there were depositions being taken on a regular basis?

22 A Yes.

23 Q And those materials that were sent to you that are on
24 Exhibit 37, sir, were those materials, to your knowledge, that
25 were actually available before you wrote your report?

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1 A They were not available before the report.

2 MR. McNELIS: I would like to offer Exhibit 36 into
3 evidence, Your Honor.

4 THE COURT: All right. Let's go.

5 BY MR. McNELIS:

6 Q Dr. Joshua, do you believe the information you have been
7 provided is sufficient for you to render opinions that you
8 prepared to offer in this case?

9 A Yes.

10 Q Are all of the opinions you are prepared to offer in this
11 case opinions you hold to a reasonable degree of medical
12 probability?

13 A Yes.

14 Q Could you please tell the Court how you came -- do you
15 have opinions about whether -- if Fluvanna Correctional Center
16 for Women, the folks there are complying with the terms of the
17 settlement agreement?

18 A Based on the review of everything I've seen, as well as
19 the standards from the National Commission on Correctional
20 Health Care, Fluvanna is meeting the standards of the
21 compliance agreement.

22 Q And do you base that opinion, sir, in addition to the
23 materials that you reviewed, on your education, training, and
24 experience in correctional health care?

25 A Yes, I do.

DIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 Q And your experience in consulting in correctional health
2 care?

3 A Yes, I do.

4 MR. McNELIS: Your Honor, I would like to offer
5 Dr. Joshua as an expert in correctional medicine -- oh, let me
6 back up.

7 BY MR. McNELIS:

8 Q Dr. Joshua, in addition to your duty at the San Diego
9 County Sheriff's Department as the chief medical director, do
10 you have an active -- chief medical officer, excuse me -- do
11 you have an active clinical practice in emergency medicine?

12 A Yes. I'm still a board certified emergency room
13 physician that practices, actually every Sunday, at the VA
14 hospital in San Diego. So I provide medical care at the
15 emergency department as an ER physician. And my last shift
16 was Sunday.

17 Q And in your -- as part of your clinical duties as an
18 emergency medicine physician at the VA in San Diego, do you
19 treat adult women patients?

20 A Yes.

21 Q On a regular basis?

22 A Yes.

23 MR. McNELIS: Your Honor, I would like to offer
24 Dr. Joshua as an expert in correctional medicine, emergency
25 medicine, and correctional health care administration and

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1 delivery systems.

2 THE COURT: All right.

3 MR. HOWARD: Subject to our prior objection.

4 THE COURT: Okay.

5 BY MR. McNELIS:

6 Q Dr. Joshua, based on the materials you reviewed which are
7 identified in Exhibits 36 and 37, do you believe to a
8 reasonable degree of medical probability that the Fluvanna
9 Correctional Center for Women is complying substantially with
10 the settlement agreement?

11 A Yes, I do.

12 Q Can you tell the Court why you believe that is the case?

13 A So based on all the materials I've reviewed, it looks to
14 me that Fluvanna has made substantial improvements on a number
15 of areas that was first identified in the settlement
16 agreement; areas such as staffing, areas such as scope of
17 practice, areas such as sick call, areas such as the
18 equipment, as well as the medical leadership and the overall
19 direction of the facilities.

20 Q Now, as part of your assessment of the care -- I'm sorry.
21 As part of your assessment of the systemic compliance or
22 noncompliance in this case, did you actually visit the
23 Fluvanna Correctional Center for Women?

24 A Yes, I did. So on March 21, 2018, I did a site visit to
25 Fluvanna.

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1 Q Can you just tell the Court briefly about that?

2 A So during that day -- started early. At the beginning of
3 the day, I met with Warden Aldridge, assistant warden, medical
4 leadership, Marsha and Ellen, as well as other members of the
5 team to really understand what the culture was and what was
6 going on at the facility.

7 And then throughout the day we went to different
8 housing areas, to the medical areas, observed the pill line,
9 and even in the afternoon I was able to witness the offender
10 advisory group.

11 Q Prior to arriving at Fluvanna, Dr. Joshua, what were your
12 expectations, if any, about what you would find when you
13 arrived at that facility and conducted your site visit?

14 MR. HOWARD: Objection. Relevance.

15 THE COURT: Overruled. Go ahead.

16 A So I think there's a -- so when I first read all the
17 materials, I had a very, very different picture in my mind of
18 what the facility would look like. I thought it was going to
19 be very dirty, very loud, very chaotic, as well as a lot of
20 the deficiencies from the clinical care piece on what I read.

21 When I went to the facility, it was a very different
22 picture. It was a very clean facility. It was very quiet.
23 It was orderly. The inmates were very respectful. The
24 deputies staff and the sworn staff were very respectful to the
25 inmate patients. And I saw a real collaboration of leadership

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1 among them, especially the medical leadership, especially
2 Marsha and Ellen.

3 MR. McNELIS: Could you pull up the photographs?

4 BY MR. McNELIS:

5 Q Dr. Joshua, while you were conducting your site visit
6 this past March, did you instruct people to take pictures at
7 various -- of various parts of the facility as you toured it?

8 A Yes, I did.

9 MR. McNELIS: We are pulling those pictures up right
10 now, Your Honor. I hope.

11 BY MR. McNELIS:

12 Q Dr. Joshua, I'm going to show you a series of photos, and
13 then I guess at the end we will identify it as an exhibit and
14 try to move it into evidence.

15 Can you tell the Court, is this one of the photos
16 that was taken during your site visit?

17 A Yes, it was.

18 Q And what does this depict, sir?

19 A So this is the triage area in the infirmary area of the
20 jail -- I mean, of the prison.

21 Q And is that how it appeared during your visit in March of
22 this past year?

23 A Yes, it was.

24 Q Could you just comment on the general condition of that,
25 based on your expertise in correctional health care?

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1 A So, again, you could see how clean it was, how organized
2 it was. And I was able to speak with the staff there. At the
3 time there was no one that required a triage, but it was very
4 kept, very organized and clean.

5 Q Is this area that's depicted in this photograph the area
6 where, to your understanding, inmates who filed emergency
7 grievances would be taken to be triaged?

8 A Yes.

9 Q Next photo, please. And is this also a picture of that
10 same triage area?

11 A Yes.

12 Q Next photo, please. Can you tell the Court what is
13 depicted in this photograph?

14 A So based on some of the reports of some of the
15 plaintiffs' experts about the equipment, I wanted to look at
16 the equipment and see, were they in good working order, and
17 what condition they were.

18 As you can see in the picture, the wheelchairs are
19 fairly brand-new. The medical gurneys and the crash cart were
20 all in fairly good working condition and look like they're
21 actually on the newer side.

22 Q How would you describe, based on your experience in
23 correctional health care and running one of the largest jail
24 systems in the country, the level of quality and maintenance
25 of the equipment depicted in this photograph?

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1 A So the quality is actually much higher than what I was
2 expecting. I was expecting equipment that was going to be 15,
3 20 years old, based, again, on many of the reports and many of
4 the allegations from some of the plaintiffs' side. So I
5 really wanted to look at much of the equipment, and it looked
6 very in good working order and on the newer side.

7 Q Next photo, please. And is this also a picture of the
8 same wheelchair?

9 A Yes.

10 Q Next photo, please. Can you tell the Court what is
11 depicted in this photograph?

12 A So I went -- and this is, again, in that infirmary-type
13 area. So I went down the halls and looked at some of the
14 individual rooms, and this is a medical-grade bed.

15 Q And you say -- what type of room is this that's depicted
16 here, if you can describe to the Court?

17 A So it was in the infirmary area for patients that had
18 medical conditions.

19 Q Next photograph. And you were talking about the type of
20 bed. Can you explain to the Court what type of bed this is
21 that you saw on your visit?

22 A So this is a medical-grade bed similar to what you would
23 see at a hospital.

24 Q Next photograph. Could you please tell the Court what is
25 depicted in this photograph?

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1 A So this is the dental room with the dental equipment that
2 the inmates get. And it was actually a really nice area, and
3 many of the equipment looked like it was on the fairly new
4 side as well.

5 Q Is this equipment of the caliber that you have seen in
6 other correctional facilities, or better?

7 A I would actually say better than a lot of other
8 facilities.

9 Q Next photograph. Can you please tell the Court -- go to
10 the next photograph after this one. I think it might be
11 better.

12 Can you please tell the Court what this photograph
13 depicts?

14 A So this is where the dialysis machines and where the
15 dialysis was taking place. And as you can see from the
16 machines, and the room actually -- the picture doesn't really
17 give justice to it, but it's nice and clean, well-lit, and a
18 pretty fairly nice room.

19 Q How would you describe the caliber and quality of the
20 dialysis equipment depicted in this photograph?

21 A So, again, I didn't see a person doing the dialysis
22 machine, but basically, the equipment looked like it was in
23 good working order.

24 Q Next photograph. Could you tell the Court what's
25 depicted in this photograph?

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1 A An X-ray machine.

2 Q And can you describe the quality or -- is that a -- how
3 would you describe that X-ray machine?

4 A So the X-ray machine was in fairly good working order.
5 The reason I specifically looked in this area was there was an
6 allegation in one of the expert reports on the plaintiffs'
7 side that the certificate for this X-ray machine had expired.
8 So I wanted to look and see if that certificate was expired.

9 Q Next photo. Did you take a look at the certificate? Is
10 that a picture of the certificate?

11 A Yes. I specifically asked for this picture.

12 Q What does the certificate indicate, Dr. Joshua, with
13 respect to when the certification expires?

14 A That the certification was active.

15 Q Next photograph. And what is this a picture of, sir?

16 A Still part of that X-ray room.

17 Q Next photograph. Can you please tell the Court what that
18 is?

19 A So that's a mammogram machine.

20 Q There's been some testimony -- well, strike that.

21 Is that mammogram machine dated or out of date?

22 A It looks on the fairly newer side.

23 Q Next photograph. And these are photographs of what, sir?

24 A The library. I wanted to look at, you know, where the
25 inmates were getting recreational or other type of activities

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1 as well on my site visit. And this was actually a really nice
2 library that they had.

3 Q Next photo. Is that another picture of the library?

4 A Yes.

5 Q Next photo. Is this -- what is this a picture of?

6 A Still part of that.

7 Q The library. Next photo. That's also the library.

8 Can you tell the Court what is depicted here if the
9 Court can't figure it out?

10 A So it's -- they have a pretty nice size gym. The gym was
11 actually very clean, well-lit, and exercise machines, as you
12 can see, against the wall.

13 Q Next photo. Is that also a picture of the gym?

14 A Yes.

15 Q Next photo. Same thing?

16 A Yes.

17 Q And what is this a picture of?

18 A So when I was observing the pill line, this was basically
19 for the diabetic checks. This was in that central location,
20 and the inmates were lined up to basically receive medications
21 and diabetic finger-stick glucose checks.

22 MR. McNELIS: At this point, Your Honor, I would like
23 to offer the series of -- I believe it's 21 photographs as
24 Defendant's Exhibit Number 48.

25 MS. MULDOUNEY: 38.

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1 MR. McNELIS: 38. I'm sorry.

2 MR. HOWARD: No objection, Your Honor.

3 THE COURT: They will be admitted.

4 (Defendant Exhibit Number 38 was marked and received.)

5 MR. McNELIS: And Heidi, we will have to put that
6 together and give it to you during a break. You can take that
7 down.

8 BY MR. McNELIS:

9 Q Dr. Joshua, based upon your review -- your personal site
10 visit of the facility, was it your -- what is your opinion
11 about how they performed pill pass, for example?

12 A So it was very orderly. The nurses, especially Marsha,
13 the HSA, as well as Ellen, the director of nursing, really
14 implemented real change in the sense of from a cultural
15 standpoint, and then also from the other nurses and the
16 providers that were there. The inmates were lined up on that
17 day. And basically, it was very orderly.

18 Q What about with respect to the medical leadership? Did
19 you have access to various people when you were at the
20 facility?

21 A Yes, I did.

22 Q Tell us about some of the people you got to interact
23 with.

24 A So I got to interact with the health services
25 administrator, Marsha Stanford, who really has not only a

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1 great attitude but also has great rapport with the inmate
2 patients. She was really personable to a lot of the inmates.
3 And actually, if there was an issue with them, she would
4 personally go and talk to them about those issues and really
5 tried to alleviate a lot of potential grievances at the line
6 level.

7 She also instructed many of her nurses in terms of
8 the vision and direction of how they should go and really
9 spoke to her previous experience to do that.

10 Q Did you meet with other members of the administration?

11 A Yes, I did, with Ellen Katzman, the director of nursing,
12 and then heard about the recruitment efforts that was being
13 had.

14 MR. HOWARD: Your Honor, I'm going to object to some
15 of this as hearsay.

16 THE COURT: Well --

17 MR. McNELIS: I'm not offering any of this for the
18 truth. I mean, I don't think he has quoted anybody on
19 something we're offering for the truth.

20 MR. HOWARD: It's clearly offered for the truth, Your
21 Honor. Otherwise, it's irrelevant.

22 THE COURT: Well, but he --

23 MR. McNELIS: He is talking about verbal conduct.
24 Your Honor, verbal conduct.

25 THE COURT: He expressed an opinion and he's talking

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1 to people to form his opinion. That's all. Go ahead.

2 MR. McNELIS: Okay. Thank you, Your Honor.

3 THE COURT: Overruled.

4 BY MR. McNELIS:

5 Q You met with Ms. Katzman as well?

6 A Yes.

7 Q Did you have occasion to meet Warden Aldridge?

8 A Yes, I did.

9 Q Based upon your site visit, do you believe that the
10 health care services that are being provided at Fluvanna
11 appear to be appropriate?

12 A Actually, I felt it was above what I was even expecting.
13 And one of the really surprising things to me was as we were
14 doing the site visit, the warden was with me walking around.
15 Many of the inmates would come up to the warden and to Marsha
16 and basically say how good the care was they were getting and
17 how things have improved. And so I was surprised to hear that
18 from a number of inmates as I was passing by.

19 MR. HOWARD: Your Honor, we are going to object to
20 this line of questioning. We had attempted to resolve a
21 matter involving the fact that attorneys from the defendants
22 were present and -- during the interaction between --

23 THE COURT: All of that goes to the weight of the
24 evidence. I mean, obviously why people come up and say things
25 at different times, you know, could be influenced by any

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1 number of things.

2 MR. HOWARD: But specifically with regard to the
3 ethical issue regarding the presence of the attorneys during
4 these communications, we thought we had made an arrangement
5 whereby what the inmate said would not be mentioned during
6 testimony.

7 MR. McNELIS: I was getting ready to move on to
8 another area, Your Honor. I'm not --

9 THE COURT: I mean, I will take that -- I think still
10 it all goes to the weight.

11 MR. HOWARD: Thank you, Your Honor.

12 THE COURT: Go ahead.

13 BY MR. McNELIS:

14 Q Let me shift gears with you, Dr. Joshua. As part of your
15 review of this case, did you review the clinical medical
16 records of Ms. Liberato?

17 A Yes, I did.

18 Q Did you also review the clinical medical records of
19 Ms. Niece?

20 A Yes.

21 Q First of all, let's focus on Ms. Liberato. Based upon
22 your review of the clinical medical record of Ms. Liberato, do
23 you believe to a reasonable degree of medical probability that
24 the care she received at Fluvanna was appropriate care?

25 A Yes, I do.

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1 Q Could you please tell the Court why you believe that?

2 A So Ms. Liberato is a 70-year-old female with a history of
3 high blood pressure, diabetes diagnosed in 1991, has a history
4 of heart failure, and has had two heart attacks in 1989 and
5 2000. So she has a lot of co-morbid conditions.

6 She was on a number of cardiac medications. She was
7 on diuretic medications. And while she was at Fluvanna, she
8 was actively seen by the medical staff. So it's unfortunate,
9 but when you have some of these co-morbid conditions, it does
10 increase your risk of having death.

11 And some of it is from long-term damage such as high
12 blood pressure, diabetes, heart attacks that weaken your
13 heart. So there is also the component where a person has to
14 also have dietary compliance. She was put on a low-sodium
15 diet. But obviously the commissary can be outside of it. And
16 then medication compliance, because there was a report after
17 her death that some of her medications she wasn't taking and
18 storing in her cell. So those two aspects also do have a role
19 in it.

20 But looking at her entire clinical condition, it
21 would have seemed, even if she was in the community, because
22 of those risks factors she would have succumbed to the same
23 fate.

24 Q But, Dr. Joshua, you are aware that Ms. Liberato had a
25 weight gain right before she passed away. Right?

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1 A So in the past -- I have reviewed her records extensively
2 of the past two years while she was at Fluvanna. There have
3 been times even prior to that, even a year ago, where she
4 would gain, you know, 20-plus pounds in one direction and then
5 20 pounds in the other direction. There were issues with her
6 legs where she had chronic edema. She had infections. So the
7 medical staff were actively involved in her care and was
8 constantly dealing with certain issues.

9 But with something like congestive heart failure, you
10 will have your good days and you will have your bad days.
11 There isn't a point where you are going to be cured of
12 congestive heart failure. There's not a point where you're
13 cured of diabetes. And so these things over time do build up,
14 and there aren't -- you know, it's unfortunate, but regardless
15 of a prison setting or in a community setting, or even in a
16 hospital setting, people do succumb to the risk factors over a
17 long period of time.

18 Q And do you believe that Ms. Liberato had advanced
19 congestive heart failure?

20 A Yes.

21 Q And do patients with advanced congestive heart failure,
22 Doctor, tend to have times when they retain more fluid and
23 don't retain more fluid; they have weight fluctuations like
24 she had?

25 A Yes. And that's why she was prescribed the medication

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1 called Lasix. That is -- essentially, you pee out the excess
2 fluid of the body. But one of the areas, looking at it, if
3 she wasn't taking that medication or her heart medications, it
4 could have created a worse exacerbation of those conditions.

5 Q Now, let me ask you to focus on Ms. Niece. Can you tell
6 the Court whether you believe, based upon your review of
7 Ms. Niece's clinical medical records, whether the care that
8 was provided to her at Fluvanna was appropriate?

9 A Yes.

10 Q And you believe that to a reasonable degree of medical
11 probability?

12 A Yes.

13 Q Can you please tell the Court why you hold that opinion?

14 A So Ms. Niece died of a saddle pulmonary embolus. And
15 this is a large blood clot that basically, 99 percent of the
16 time, will kill somebody right there and then.

17 The reports colloquially is somebody gets off an
18 airplane, they collapse, die. Those are what typically
19 happens is a saddle pulmonary embolus.

20 So in this type of situation, Ms. Niece didn't have
21 any risk factors that would show that she had pulmonary
22 embolus. She didn't have a previous deep vein thrombosis or
23 blood clot in the leg. She didn't have a previous PE or was
24 put on any anti-coagulation medication. No recent
25 immobilization, travel, or surgery, or on hormone replacement.

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1 She did have a history of multiple sclerosis, but
2 that just marginally increases the risk. But based on all of
3 her symptoms and conditions, when she was complaining of
4 shortness of breath and saying that it was really hot and her
5 heart rate was elevated, the reasonable conclusion would have
6 been maybe she was a little dehydrated. And they actually did
7 recommend to drink plenty of fluids.

8 But as an emergency room physician, I can say
9 pulmonary embolus is one of the hardest diagnoses to make. It
10 is up there with -- similar to aortic dissection, and with a
11 reason being that the symptoms are very, very vague. And you
12 really -- the way to make the diagnosis in the emergency
13 department is to get a CAT scan of the chest.

14 And unfortunately, even if she got to the emergency
15 department, many times physicians might not order the CAT scan
16 of the chest because you have to have a high level of
17 suspicion, because ordering a CAT scan also exposes a young
18 person like her, 39, to radiation which is a significant
19 amount of radiation. So they have to make that decision.

20 And with a saddle pulmonary embolus, even if she was
21 just put on anti-coagulation and the clot broke off, she still
22 could have surpassed to a sudden cardiac death in the
23 hospital.

24 So even with all the symptomology and all the
25 conditions, the care was appropriate. It's unfortunate what

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1 happened, but this was a very difficult diagnosis.

2 MR. McNELIS: Dr. Joshua, those are all the questions
3 I have at this point. Thank you very much.

4 THE WITNESS: You're welcome.

5 THE COURT: All right. You may cross. Go ahead.

6 **CROSS-EXAMINATION**

7 BY MR. HOWARD:

8 Q Good morning, Dr. Joshua.

9 A Good morning.

10 Q Could you look at Exhibit 37, please? That's the list of
11 your supplemental materials.

12 A Yes.

13 Q What's the first item listed there?

14 A Contract letters to Armor and Mediko.

15 Q And those are letters that were sent by DOC to those two
16 contractors. Correct?

17 A Yes.

18 Q Are you aware that the date on those letters was
19 September 27, 2017?

20 A I would have to review it again.

21 Q So assuming that I'm correct, it's not true, is it, that
22 all the materials on the supplemental list were not available
23 when you first wrote your report?

24 A So it was when it was sent to me. So everything in my
25 actual report from 1 through 35 was what was sent to me by

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1 email by counsel.

2 Q That's not what I asked you, sir. I asked you if it was
3 true that all the materials listed on this supplemental list
4 were unavailable at the time that you did your initial report?

5 A So to my understanding, from 1 through 35 was what was
6 available to me.

7 Q I didn't ask what was available to you. I asked about
8 what was available. Similarly --

9 MR. McNELIS: Objection. How could he possibly know
10 what was available?

11 THE COURT: Well, you asked him that first.

12 MR. HOWARD: Yes, you did.

13 THE COURT: And he answered it.

14 THE WITNESS: Again, to my understanding, 1 through
15 35 was all that was available.

16 BY MR. HOWARD:

17 Q So DOC and Armor analysis of April 20, 2017, plaintiff
18 attorney letter, that was unavailable to you?

19 A I -- if I don't know about it. I mean, 1 through 35 is
20 what I knew about based on the emails that were sent to me.

21 Q Okay. You have made your point.

22 With regard to the equipment photos, do you have any
23 idea when those items actually got to Fluvanna?

24 A I do not.

25 Q Okay. Would it come as a surprise to you if the facility

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1 was in pristine condition and all the equipment was all shiny
2 and everything like that for purposes of your visit on
3 March 21?

4 A I would find that very hard to believe, that they would
5 just do it for one day and just dress up the entire facility
6 for one day.

7 Q You would find that hard to believe?

8 A I would find that hard to believe.

9 Q You made reference to cultural changes that you
10 attributed to Ms. Stanford and Ms. Katzman. You don't have
11 any idea what the culture was like before March 21, do you?

12 A The culture that I got was from reading all of --
13 everything from the settlement agreement and from all the
14 documents that I reviewed from 2012 and what all of the
15 allegations were. So I had the picture in my head of what
16 that environment would be like and what the culture was.

17 And also with the problems with the retention in
18 staffing that there would have to be, just based on my own
19 experience at my own facility -- I do oversee 225 nurses --
20 and I do understand the challenges with recruitment and
21 retention of nursing staff, that similar issues could
22 potentially be there.

23 Q Are you aware that Fluvanna was considerably understaffed
24 with regard to nursing as recently as January of 2018?

25 A So I saw that in the reports, yes.

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1 Q And are you aware of Ms. Katzman's testimony yesterday
2 that they went from significantly understaffed in terms of
3 nursing to overstaffed in a period of five months?

4 A Yes. I saw that.

5 Q Is there any reason, to your knowledge, why that couldn't
6 have been done sooner?

7 A So again, I put this in my actual report, that there is a
8 fallacy in terms of even the staffing numbers. It's really,
9 are the functions and the care provided to the inmates, is
10 that adequate and is it being done and are inmates having
11 access to care? And so you could have these numbers, but it
12 really is, are those functions being done?

13 And so the way that the medical leadership under
14 Marsha and -- and I can only speak under their leadership
15 because my site visit was March 21. It appeared that not only
16 was there significant changes with the way the culture was,
17 but also in terms of the processes and also continuous daily
18 improvement.

19 Q Have you read Dr. Scharff's compliance monitor reports
20 from March 2016 through the present?

21 A Yes, I did.

22 Q And do you have any reason to conclude on the basis of
23 reading those reports that the staffing was adequate to meet
24 patient needs prior to very recently?

25 A So based on how that was structured and based on

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1 everything that was stated in the documents, he did state that
2 it was being understaffed.

3 Q And as of the time that you rendered your report and were
4 deposed in this matter by Ms. Castaneda, my colleague, you had
5 only read the February 2018 report by Dr. Scharff. Correct?

6 A Yes.

7 Q Was there any reason why you hadn't read the others prior
8 to that?

9 A So I thought I read all of it. The one -- I just got the
10 recent one where it was a draft form of Dr. Scharff's report.
11 So that was the only new report since the deposition.

12 Q That, I don't believe, was what I asked you. Is there
13 any reason why the reports between March 2016 and
14 February 2018 hadn't been reviewed by you in preparing your
15 report?

16 A So I believe I reviewed all of them.

17 Q You think that was your deposition testimony?

18 A Yeah. I believe that was.

19 Q You made reference to -- oh, before I leave the photo
20 issue completely: Have you seen the photos taken at Fluvanna
21 during Nurse Clark's visit?

22 A No, I have not.

23 Q Regarding Ms. Liberato's medical record review and your
24 opinions with regard to the sufficiency of her treatment, have
25 you seen the mortality review report prepared by Dr. Gable?

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1 A Yes, I have.

2 Q And you are aware, are you not, that there is a list of
3 points addressed under the topic "Discussion" at the end of
4 that report that, per Dr. Gable's testimony, identify matters
5 that he believes were opportunities for self-critical analysis
6 and improvement on the part of Fluvanna medical staff?

7 A Yes, I am.

8 Q Okay. So you basically just discount or disregard
9 Dr. Gable's opinions with regard to the sufficiency of
10 Ms. Liberato's care?

11 A So I think Dr. Gable spoke pretty well yesterday related
12 to that. And I think this is the unfortunate part with
13 quality assurance.

14 In a hospital setting, quality assurance is pretty
15 protected. Like, you have an M&M review and many of this
16 discussion happens. But in a jail or prison setting, it's not
17 confidential. So much of that quality assurance is now open
18 to the public. So he is looking for ways on how to improve
19 the system, and that's how the system improves. But you can't
20 say that there is no, let's say, quality assurance mechanism
21 in place, and then say because they are offering
22 recommendations on how to improve it, that basically that's --
23 you know, that the care is really bad.

24 That's part of the responsibilities of a physician
25 leader, to basically do that quality assurance. So he was

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1 doing his job. And I think he eloquently said it yesterday in
2 terms of that respect.

3 Q But it's not either/or, necessarily, is it? I mean,
4 there can be opportunities for improvement, but there are also
5 problems or he wouldn't have identified them; isn't that
6 correct?

7 A So based on that rationale, I think you can have a
8 settlement agreement at the Cleveland Clinic, the Mayo Clinic,
9 even Mass General, because basically all of that similar
10 information is being discussed in the hospital on any given
11 day. And so based on that same logic, you would say there are
12 so many problems at every organization, every institution.

13 The real question is, is there systemic issues? And
14 at Fluvanna, there wasn't systemic issues, based on my review.

15 Q Dr. Joshua, you have expressed some opinions regarding
16 the "prescriptive" nature of some of the compliance standards
17 set forth in the settlement agreement; is that correct?

18 A Yes.

19 Q And it's your opinion that those provisions, because of
20 the way they are formulated, may hinder rather than actually
21 help the goals of the settlement agreement. Right?

22 A Yes.

23 Q Okay. Are you familiar with the Prison Litigation Reform
24 Act, Dr. Joshua?

25 A Can you just explain what you are talking about?

CROSS-EXAMINATION OF DR. ALFRED JOSHUA

1 Q It's a federal statute that governs both the nature of
2 agreements that can be reached by parties with governmental
3 entities relating to corrections conditions and imposes
4 limitations on what federal courts can approve with regard to
5 types of agreements.

6 Do you have any knowledge of that?

7 A So I have -- I have a general understanding, but I'm
8 not -- like, I haven't read it to that tee.

9 Q So in critiquing the settlement agreement and its
10 provisions, you are not attempting to collaterally attack this
11 Court's view that the settlement agreement was appropriately
12 approved under the terms of the PLRA, are you?

13 A So I'm not attacking that point. What I'm stating is if
14 the goal is to improve the quality and care at Fluvanna for
15 the inmates, then you have to look at it in a very different
16 light. You have to empower the leadership, provide them the
17 autonomy, and actually have -- I would say space out the
18 intervals for even when people are coming to do the checks,
19 because every three months is a very, very short period of
20 time. And in the settlement agreement, there is no -- what
21 the timeline is to achieve certain things, there's no
22 priorities. And I listed all of that in my report.

23 If this was any kind of other private entity, you
24 would go bankrupt, because you need to have priority, you need
25 to have timelines, and then you need to have reasonable checks

CROSS-EXAMINATION OF DR. ALFRED JOSHUA

1 on what that timeline looks like.

2 Q You've endorsed and would prefer the National Commission
3 on Correctional Health Care, NCCHC, standards to the standards
4 set forth in the settlement agreement. Correct?

5 A Yes.

6 Q But didn't you acknowledge in your deposition that the
7 standards set forth in the settlement agreement with regard
8 to, for example, grievance procedure and the standards
9 articulated by the NCCHC are basically the same?

10 A So there were aspects of the settlement agreement that
11 actually --

12 Q It's a yes-or-no question, Doctor.

13 A Well, I have to explain it, because it's not a --

14 Q I'm sorry, you don't have to explain.

15 THE COURT: Just answer the question. Then explain
16 it.

17 THE WITNESS: Okay.

18 So can you repeat that again?

19 BY MR. HOWARD:

20 Q Yeah. So the question was whether in your deposition you
21 didn't acknowledge, with regard to several standards set forth
22 in the settlement agreement, that you regarded to as quoted,
23 "prescriptive," that in fact the language is virtually
24 identical to the NCCHC standard?

25 A Yes.

CROSS-EXAMINATION OF DR. ALFRED JOSHUA

1 Q Okay.

2 A So to clarify.

3 Q You have answered my question. Thank you. If your
4 counsel would like to ask you to explain further, he may do
5 so.

6 A Okay.

7 Q And you also criticized Dr. Scharff for interpreting
8 compliance provisions in the settlement agreement in a
9 "arbitrary manner."

10 Do you recall that?

11 MR. McNELIS: I'm going to object to this as beyond
12 the scope of direct. He didn't levy one criticism against
13 anything in his direct examination, so I don't know how I've
14 opened the door to this.

15 THE COURT: Well, he has expressed the broad opinion
16 that everything is going well, that everything is as good as
17 it could be. So I think he can ask questions concerning how
18 he formulated his opinion.

19 MR. HOWARD: Thank you, Your Honor.

20 BY MR. HOWARD:

21 Q At your deposition, the example you provided with regard
22 to illustrating the arbitrariness of Dr. Scharff's analysis
23 was not anything said in his reports, but rather something you
24 were told at the prison during your visit about Dr. Scharff's
25 comment about the need for hot water in the laundry. Correct?

CROSS-EXAMINATION OF DR. ALFRED JOSHUA

1 A Yes.

2 THE COURT: Do stick to his testimony. If he is not
3 offering opinions on a subject here today, there is no need to
4 try to cross-examine him about those.

5 BY MR. HOWARD:

6 Q I guess my point, Dr. Joshua, was that on Exhibit 36,
7 which is the materials that you reviewed as of the time --

8 A Yes.

9 Q -- that you did your report, you list Dr. Scharff's
10 report for February 2018.

11 Do you see that? That's Number 11, item 11 on that
12 Exhibit 36.

13 A Yes.

14 Q But Dr. Scharff doesn't say anything about hot water in
15 the laundry in that report, does he?

16 A He does not.

17 Q You also have expressed an opinion criticizing
18 Dr. Scharff for failing to recognize the significance of
19 American Correctional Association accreditation of Fluvanna in
20 December of 2017. Correct?

21 A Yes.

22 Q Okay. But you also acknowledged in your deposition
23 testimony that ACA accreditation does not say anything in
24 particular about either the appropriateness or timeliness of
25 medical care for patients; isn't that correct?

CROSS-EXAMINATION OF DR. ALFRED JOSHUA

1 A So that's why I stated that the NCCHC accreditation with
2 the ACA would fulfill many of what was really required in the
3 settlement agreement.

4 Q So is that a yes with regard to the fact that ACA
5 standards don't say anything in particular about
6 appropriateness or timeliness of treatment for patients?

7 A It is not particularly focused on medical care.

8 Q Okay. So why should Dr. Scharff have given credit to
9 Fluvanna for ACA accreditation?

10 A Because -- so the medical areas in a jail or any prison
11 doesn't operate in silo. They work with the support staff and
12 the security component. So you also want a standard there
13 with the correctional staff to basically be able to have the
14 environment so that an effective medical program can be in
15 effect, in terms of access, in terms of the resources.

16 And so ACA provides baseline level resources, but --
17 actually, baseline level standards on the correctional side
18 that significantly impact medical. So NCCHC is much more
19 focused on medical and mental health, and that's why I felt
20 the collaboration between the two and having both would
21 actually significantly improve and create objective standards
22 going forward.

23 Q Do you know how long Fluvanna has been ACA accredited?

24 A I believe in the 2000s is when they started.

25 Q Okay. So that was before this lawsuit started in 2012.

REDIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 Correct?

2 A Yes.

3 Q And before Judge Moon rendered his opinions with regard
4 to deliberate indifference to medical care in 2014. Correct?

5 A Yes.

6 Q And before the settlement agreement was reached.

7 Correct?

8 A Yes.

9 Q Okay. With regard to NCCHC accreditation, are you aware
10 of any correctional institutions around the country that are
11 NCCHC accredited, but nevertheless have been found by courts
12 to have engaged in the provision of unconstitutional medical
13 area?

14 A Not that I'm aware of. I know of a number of places that
15 they've gone into a consent decree and then they subsequently
16 have gotten the accreditation.

17 MR. HOWARD: I have nothing further, Your Honor.

18 THE COURT: All right.

19 **REDIRECT EXAMINATION**

20 BY MR. McNELIS:

21 Q Real quickly, the ACA accreditation is broadly focused on
22 the overall mission of correctional facilities. Correct?

23 A Yes.

24 Q There is a medical component to that accreditation?

25 A There is, but the surveyors are not medically trained.

REDIRECT EXAMINATION OF DR. ALFRED JOSHUA

1 Q Now, with the NCCHC that you are talking about, that is a
2 medically focused certification looking solely at the medical
3 aspects of the facility?

4 A The medical, mental health, and dental. Yes.

5 Q And Dr. Joshua, just to respond to a comment the Court
6 made, it is not your testimony, is it, sir, that everything is
7 as good as it could be at Fluvanna, is it?

8 A No. There were significant improvements made from the
9 time of this settlement agreement.

10 Q And based upon your review of all the evidence in this
11 case having sat through several days of this trial, is it your
12 belief to a reasonable degree of medical certainty that
13 improvements will continue?

14 A Agree.

15 Q And do you believe that the timetable that they are on is
16 appropriate, given the terms of the settlement agreement?

17 A Yes.

18 MR. McNELIS: Thank you very much.

19 THE COURT: All right. Thank you, Doctor. You may
20 step down.

21 We will take about a ten-minute recess.

22 MS. CIOLFI: Your Honor, if I may, there is just one
23 quick thing. The plaintiffs had asked that Ms. Tina Miller be
24 transported this morning in anticipation of calling her in
25 rebuttal. And the plaintiffs have since concluded she will

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 not be needed for rebuttal. And we would ask with Your
2 Honor's permission, if she -- she's been in the holding cell
3 all morning -- if she could come into the courtroom for the
4 remainder of the day.

5 THE COURT: All right.

6 MR. McNELIS: She's not a witness, you said?

7 MS. CIOLFI: She's not going --

8 MR. McNELIS: Certainly no objection on our part.

9 MS. CIOLFI: Thank you, Your Honor.

10 THE MARSHAL: All rise.

11 (Recess taken from 11:48 a.m. until 11:59 a.m.)

12 THE COURT: Your next witness.

13 MS. LONDOS: The defense calls Deputy Director Scott.

14 **N.H. "COOKIE" SCOTT, DEFENDANT'S WITNESS, SWORN**

15 **DIRECT EXAMINATION**

16 BY MS. LONDOS:

17 Q Please state your full name for the record, please.

18 A It's N.H. "Cookie" Scott. That's S-C-O-T-T.

19 Q And your current position with the Virginia Department of
20 Corrections, please?

21 A I'm deputy director for the division of administration.

22 Q Could you please recite your educational history,
23 starting in college, and your professional history through
24 today to give the Court an understanding of what brought you
25 to this position today?

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 A I am actually the first African-American graduate of
2 Longwood University. I graduated with a degree in sociology
3 with a concentration in social welfare.

4 After college, I went to work at the University of
5 Virginia Medical Center. I worked on the psychiatric ward for
6 about 13 months, at which point I was hired as a probation
7 officer with the 16th Judicial District here in
8 Charlottesville. I worked from '73 to '76 as a probation
9 officer, and I was promoted to probation supervisor with the
10 Court. In '77, I became acting director for the Court, and
11 then promoted to court service unit director in 1978. And I
12 worked in Charlottesville.

13 I was responsible for the City of Charlottesville and
14 eight surrounding counties for probation services, domestic
15 relations issues. And then I was promoted to human resources
16 manager for the Department of Corrections. I moved to
17 Richmond to our headquarters building. I remained in human
18 resources until 2002, at which point I was promoted to deputy
19 director for the division of administration.

20 Q And that was in 2002?

21 A That was in November of 2002.

22 Q Did there come a time when the division of health
23 services for the Virginia Department of Corrections came under
24 your line of supervision?

25 A Yes. In November of 2014, the director had been doing --

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 Director Clarke was appointed director. At that point in
2 Virginia in 2010, he began his assessment of the department,
3 how the operations worked in the agency, and in 2014 decided
4 that health services would be placed under the division of
5 administration.

6 Prior to that, it had been under the division of
7 administration until 2002. When the then-deputy decided to
8 move to operations, he wanted to take health services with him
9 because he had a particular interest. That remained with that
10 deputy until he retired, and then Director Clarke did his
11 assessment of the agency and decided that health services
12 should have been under administration because it manages the
13 support functions for the organization. And so it was
14 returned to the division of administration.

15 Q And that was in November 2014. Correct?

16 A That is correct.

17 Q Thank you. Deputy Director Scott, I would like to ask
18 you some questions about the 2015 Armor contract. Are you
19 familiar with that contract?

20 A Yes, I am.

21 Q Okay. And do you have personal knowledge as to how the
22 staffing component of that contract was crafted?

23 A Yes, I do.

24 Q Can you -- and let me begin: That Armor contract has
25 been discussed. Is that simply for Fluvanna, or is it for

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 multiple facilities in Virginia?

2 A That was for, at one point, 17 facilities in Virginia.
3 Powhatan was one of those. We changed the process -- I'm
4 sorry. That was for 17 facilities. We changed that process,
5 and now I think there are 16 that are covered by the contract.

6 Q How was the staffing component at Fluvanna of the Armor
7 contract in 2015, how was that crafted and arrived at?

8 A Fred Schilling, who was our health services director at
9 that time, led the process for looking at the staffing. It
10 was his responsibility to do the staffing component of the
11 contract.

12 He did a task analysis, which is normally what one
13 would do when looking at how to staff a unit. Based on that
14 task analysis, he brought in some -- well, he brought in some
15 other folks. He brought in some other health professionals,
16 some nurses, some senior nurses in the department. They were
17 a part of the process, and they looked at other facilities.
18 They looked at male facilities but certainly are aware that
19 women have much different health care needs. And so I knew
20 that that was just the basis of comparison, that certainly
21 we're not going to staff a female facility in the same way
22 that they staffed the male facility.

23 So they looked at ratio also, looked at how many
24 people would be offering services to a particular group of
25 people. They looked at the tasks. They looked at sick call.

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 They looked at chronic care. They looked at med pass, how
2 those things are impacted by staffing.

3 Q And are you familiar with Mr. Schilling's credentials in
4 terms of his experience in doing these similar type analysis?

5 A Mr. Schilling, Fred Schilling, came to the Department of
6 Corrections from a nursing home -- with a nursing home
7 administrator background. So he had a great deal of knowledge
8 regarding staffing. But at that point, he had also been with
9 corrections for 20 years, so also had experience with staffing
10 in corrections.

11 Q Do you know if the analysis that went into crafting the
12 staffing component of the -- for staffing in the Armor
13 contract for Fluvanna also considered trends in health care
14 and those types of issues?

15 A So, yes. It looked at -- task analysis is certainly a
16 big component of looking at staffing. So he was looking at
17 how many people we needed to do what, but also he's projecting
18 for the future. So he looks at what the national trends are.

19 I know that we had a discussion at one point
20 regarding drug issues. We talked about heart disease, cancer.
21 I think the script had flipped. Cancer had been the leading
22 cause of issues among women, with heart disease second. We
23 considered that that had actually flipped, and heart disease
24 became the number one issue, health issue, facing women, and
25 cancer second.

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 We looked at what's happening in our own agency. I
2 mean, that's an indication of what we can anticipate in other
3 facilities as well. So all of those things came into play as
4 we were talking about staffing.

5 Q And the settlement agreement at issue in this hearing was
6 also in play at that time. Correct?

7 A Fred Schilling was a major player in our discussions on
8 the settlement agreement. Certainly aware of that, aware that
9 we were going to need to look at staffing somewhat differently
10 just based on the settlement agreement because we were going
11 to be asked to do certain things.

12 Q Could you address briefly the issue of liquidated damages
13 under the contract and the relationship between full-time
14 employees versus agency employees? Because I think that's
15 been a little -- that's been, perhaps, lost in some of the
16 conversation this week.

17 A And it's really sort of an interesting situation, because
18 under the contract, the full-time employees need to be on
19 their payroll. However, with Armor, I know that they staffed
20 with agency nurses because they had some difficulty attracting
21 full-time staff. They can be penalized for the agency nurses.
22 Despite the fact that they may be fully staffed, they may be
23 penalized because there are not full-time employees on their
24 payroll.

25 Q On Armor's payroll?

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 A On Armor's payroll. Correct.

2 Q As deputy director in 2015 when this Armor contract went
3 into effect, what was your belief, what was your opinion, as
4 to the adequacy of the staffing in the Armor contract at the
5 time it was entered in the fall of 2015?

6 A I absolutely believe that it was adequate, because I
7 believe that Mr. Schilling had looked at not only what was
8 going on with the Department; I think he had taken into
9 account the settlement agreement. I think he had looked at
10 what was going on nationally in terms of health care.

11 And the contract is structured such that it is
12 minimum staffing. This is what we minimally need to do to
13 address health care needs. That does not mean that Armor
14 could not bring on other people if they needed to do that, but
15 it also did not mean that they could not come back to us at
16 some point to say that it was inadequate and that they wanted
17 more staff. That's the side part of a contract modification.
18 They can come back and modify or request to modify the
19 contract.

20 Q Were you involved in the discussions and the drafting and
21 the crafting of the settlement agreement at issue before the
22 Court today?

23 A I was a part of that process, yes.

24 Q Can you expand on that what your involvement was? For
25 instance, did you have conversations with Dr. Scharff?

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 A We had conversations with Dr. Scharff. Dr. Kohl, who I
2 believe is a practicing physician in Nebraska, was a part of
3 that process. We had discussions regarding whether or not we
4 would comply with ACA standards, whether or not it would be
5 NCCHC standards, looking at our own policies and procedures.
6 So a number of discussions regarding the process.

7 Q Would you say you were part of the VDOC team that was
8 involved in the drafting of the settlement agreement?

9 A Yes, I was.

10 Q Okay. And your involvement -- or your communications
11 with Dr. Scharff during the process of drafting the settlement
12 agreement and the VDOC, learning and kind of having an
13 understanding of what the settlement agreement actually meant,
14 were you involved in those discussions?

15 A Yes, I was.

16 Q Based upon your involvement in the crafting of the
17 settlement agreement, the drafting of the settlement agreement
18 and all of the -- and let's just back up.

19 There were a fair number of meetings that went into
20 that process. Correct?

21 A That is correct.

22 Q Okay. Is that perhaps an understatement?

23 A Yes, that's an understatement.

24 Q Okay. Based upon your involvement in the crafting of the
25 settlement agreement and specifically your communications with

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 Dr. Scharff, what was your expectation as the deputy director
2 of VDOC as to how long it would likely take for Fluvanna to
3 come into total compliance with the terms of the settlement
4 agreement?

5 A From my perspective, I thought it would be three to four
6 years that it would take to do that. Part of the --

7 Q I was going to say: Please explain why.

8 A Okay. Partly because I think staffing is an issue.
9 Attracting staff is a major issue. We were looking at several
10 different areas. I think as we look at compliance with the
11 settlement agreement, there were 22 areas that we were to work
12 on. We knew that all of those things were not going to happen
13 in one day, one week, overnight.

14 We recognize that as staff turns over, things change.
15 And so we were looking at processes, assessing processes, and
16 fully expected that that was going to take some time. And we
17 didn't expect that everything that got fixed one day would
18 remain fixed forever.

19 When you are dealing with people and you are dealing
20 with personalities, things change. As we bring on different
21 people, the training process is important. And so those
22 things can have an impact on how we implement processes.

23 Q Can you speak to how your communications and your
24 discussions and conversations with Dr. Scharff during the
25 settlement process -- not specifics, but generally -- how that

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 played into your expectation that this would be a multiyear
2 process? I think you said three to four years?

3 A Yes. Well, I think both -- just from conversations with
4 Dr. Scharff and Dr. Kohl, the expectation was that this was
5 going to take some time. And so as we were talking about
6 that, we looked at: Are you making progress? Are things
7 happening?

8 MS. CASTANEDA: Your Honor, can we just pause the
9 Court for a minute?

10 THE COURT: If she needs to be removed, that's okay.
11 Take your time.

12 I think what we will do now is just take our lunch
13 break right now and try to come back at 20 minutes after 1:00,
14 if possible.

15 (Lunch recess taken from 12:15 p.m. until 1:19 p.m.)

16 THE COURT: All right. You may resume.

17 MS. LONDOS: Thank you, Your Honor.

18 BY MS. LONDOS:

19 Q Ms. Scott, just before lunch, you were beginning to
20 testify about the rationale for your expectation that it would
21 take three to four years for Fluvanna to meet total compliance
22 with the settlement agreement.

23 Do you recall that testimony?

24 A Yes.

25 Q Okay. And could you explain why that was your thought

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 process in February 2016 when the settlement agreement was
2 accepted by the Court?

3 A Yes. As I started to mention, there were parts of the
4 settlement agreement that required staffing. So we needed to
5 look at having the right people in the right places making
6 decisions about how we move forward with the settlement
7 agreement. There were 22 other requirements. Those were
8 things that we knew we needed to work on over time. And as I
9 mentioned, I think before we recessed, is that people do not
10 remain in one place all the time. And so we are always
11 training. We are always trying to ensure that our
12 expectations are communicated to all staff.

13 Given the size of Fluvanna, we can expect turnover in
14 security, expect turnover in our health care staff, expect
15 turnover in administration. We're having to go back time and
16 again to ensure that everybody understands what the
17 expectations are of them. And so those -- some of the things
18 that we looked at also would require money. So we were
19 looking at whether or not we were going to have to go back to
20 the legislature to ask for any additional monies.

21 So it's not a thing that I think happens immediately.
22 We work on those things. We take some steps forward. Some
23 things get sidetracked because of staffing. So it really is a
24 long haul. And as we look at what happens in our other
25 facilities, it's very similar. It's that everything is not

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1 perfect every day. Everybody who is supposed to be there is
2 not there every day. So it does take some time for things to
3 get accomplished.

4 Q Can you speak to the conversations that VDOC had with
5 Dr. Scharff during the drafting of the settlement agreement
6 that related to the concept or idea that this was going to be
7 a multiyear process to reach full compliance?

8 A Well, throughout the discussion, there were conversations
9 with Dr. Scharff, Dr. Kohl, about how long some of this would
10 take. And I think they were talking in the four- to
11 five-year --

12 MS. CIOLFI: Objection. This is hearsay. Hearsay,
13 Your Honor, what they said about how long it would take.

14 THE COURT: No, she is talking about her thought
15 process and what went into it. So with that --

16 MS. CIOLFI: Okay.

17 THE COURT: -- purpose, it's admissible.

18 MS. CIOLFI: Including the conversation with
19 Dr. Scharff about --

20 THE COURT: Well, if that went into her thought
21 process, anything that might have happened around her, if it
22 had an effect on it.

23 BY MS. LONDOS:

24 Q Ms. Scott, you also mentioned before lunch -- and I don't
25 think you expanded on it, so I'm asking you to expand on this

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1 testimony now -- the concept of the time it takes to change
2 culture. And can you also, in your answer, discuss your
3 experiences with change in culture at VDOC over the decades
4 that you have been there?

5 A Okay. Well, I've been around in corrections for 40, 45
6 years. And we're talking about an organization that is
7 statewide. It -- we have today about 12,000 employees. We
8 were a law-and-order organization for a long time. And that
9 needed to happen. That's not a criticism of our department.
10 We need to get control to make things change.

11 Once we establish that, we understand what it is we
12 need to accomplish in terms of security, then I think we have
13 an opportunity to have a culture change. And with Director
14 Clarke's appointment, we started looking at reentry. We
15 started looking at a different Department of Corrections.
16 Director Clarke started talking about a healing environment.

17 We started looking at evidence-based practices, so
18 really looking at the science of corrections, not just doing
19 the things that feel good or doing the things that somehow in
20 our gut we think work. We are looking at: Is there true
21 evidence out there? Are there things that we have seen
22 working? Is there data to support that? And so that takes
23 time.

24 And it takes time to -- particularly at Fluvanna, we
25 had adversarial relations. We have an adversarial

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 relationship. And we understand that offenders are going to
2 need to trust us. We need to give them a reason for doing
3 that. We are going to need to trust them. We can make
4 changes with them. And making that happen takes time. That
5 does not happen immediately.

6 Q When did Director Clarke join the VDOC?

7 A In November of 2010.

8 Q Okay. And he came from Massachusetts. Correct?

9 A He came from Massachusetts, yes.

10 Q You used the term "reentry." So the record is clear,
11 what is reentry?

12 A Reentry, from our perspective, is helping the offenders
13 learn what they need to learn, develop skill -- both
14 interpersonal skills, learn job skills, learn ways of dealing
15 with conflict, learn those ways that will make them successful
16 when they return to the community; that they can access a
17 legitimate economy; that they know how to deal with the public
18 safety arena.

19 Many of them are going to be under supervision.
20 There will be expectations for their behavior and their
21 performance under supervision. But what we want to do is
22 ensure that they do not return to the Department of
23 Corrections. And having said that, that's one of the things
24 that we have been achieving some success with in the
25 Department of Corrections.

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 We are number one in the country for the second year
2 in a row in terms of recidivism. Our recidivism is
3 22.4 percent. There are states in the country that their
4 recidivism -- meaning those people who are returning to
5 incarceration -- is as high as 60, 62 percent. But we are at
6 22.4 percent. And that's because we are preparing offenders
7 to reenter society.

8 Q Can you tie that into health care, and specifically
9 health care at Fluvanna, as a component of reducing the
10 recidivism and enhancing reentry into the community?

11 A Again, I think it's much the same thing. It's helping
12 people learn to take care of themselves. It's helping them
13 learn to access the process.

14 We're holding people accountable. That's one of the
15 things that's very important in looking at how we are helping
16 people to reenter society, having that healing environment in
17 our institutions. We are asking people to be ethical. We're
18 asking people to be respectful. We ask that. And if you read
19 the definition of our healing environment, you will see that
20 it says helping people do this. So it's not just the
21 offender, but it's our staff as well.

22 So it really is helping that engagement with people
23 in authority. It's helping that engagement to learn how that
24 engagement occurs. And we need to do that with offenders.
25 They do not need to see us as the bad guys.

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q That culture change that you're discussing was a part of
2 what Director Clarke brought in when he came to VDOC?

3 A That is correct.

4 Q Okay. And did you consider that a significant element to
5 the settlement agreement?

6 A Absolutely. Absolutely. The settlement agreement asks
7 us to look at our engagement with offenders as it relates to
8 their health care. That absolutely impacts how that's a
9 healing environment. And not healing just in terms of health
10 care, but healing in terms of engagement.

11 Q When you arrived at the conclusion in your mind in
12 February 2016 when the Court entered the settlement order that
13 this would be a three- to four-year process, was that based
14 upon what you had seen in the Department of Corrections over
15 the past -- since Director Clarke's arrival?

16 A Well, I think it's the history of -- it's not just the
17 Department of Corrections. As you look at culture change, it
18 takes time. It is not something that happens overnight.
19 Certainly, we've seen it with other things that we've
20 attempted to accomplish in the department.

21 But I think, just looking at my management
22 background -- I mean, we have tried to do some other things in
23 the department, and they just take time. It takes time
24 because of distance, it takes time because of numbers, and it
25 takes time just because we are a public safety organization.

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1 Q And I'm not going to ask you for specific numbers, but
2 sort of what -- the size of the Fluvanna population, is that
3 one of the -- where does that fit in VDOC, the 44 facilities,
4 in terms of the -- it's the women's prison?

5 A We are responsible for more than 30,000 offenders at any
6 given time. Fluvanna represents 1,200 of those. So we are
7 responsible for health care for 30,000 people. We have 1,300
8 or so leaving or -- pardon me, 13,000 leaving at any one time.
9 So we are dealing with a lot of offenders, a lot of facilities
10 who have very complex health systems as well.

11 Q And the Court has heard a fair amount of evidence this
12 week about Fluvanna. There are three things I don't think the
13 Court has heard of, and if you could give just sort of a brief
14 explanation for what's going on at Fluvanna with the wellness
15 program, the yoga program, and the horticulture program?

16 A Well, I -- and I have to give kudos to our warden there.
17 Warden Aldridge has really tried to change the culture in ways
18 that are very different than we have been in the past. He is
19 looking at -- in fact, he did a presentation, as a matter of
20 fact, as a part of a training program for the Department of
21 Corrections looking specifically at women's issues,
22 recognizing that women offenders are very different than men
23 and how we interact with those offenders should be very
24 different than how we interact with men. And so he has looked
25 at wellness programs.

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1 In fact, he talked with me one day about providing
2 additional funding so that he could make sure that they have
3 recreation. I have not seen the finished product, but he
4 revamped the gym so that it's not just basketball. That's
5 something that's probably more important to men than it is to
6 women; to get some exercise equipment in there.

7 He also had a volunteer who was teaching yoga there.
8 He lost that person and spoke with me about additional
9 funding, which I absolutely supported, so that we can continue
10 that process for women.

11 Q The Court has heard a fair amount of evidence this week
12 about the difficulty in recruiting staff at Fluvanna. And I
13 don't want to rehash what the Court has already heard, but
14 there are some different angles I would like you to discuss.

15 And that is the location of Fluvanna being in between
16 Charlottesville and Richmond. Has that been an impact on
17 recruiting for really any staff, including medical staff,
18 vis-a-vis or in comparison to some of your more rural
19 institutions?

20 A Well, let me begin with, before talking about
21 geographically where it's located, just talking about
22 recruitment for corrections specifically. It takes a very
23 specific personality, a personality who wants to come work for
24 corrections. Giving up your freedom when you walk inside that
25 facility, when the doors start to lock and you're not the one

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1 in control of the doors, that's a very different environment.
2 And so it takes a very -- the right individual, the right
3 personality, to want to do that.

4 One of the things that we found with younger people
5 who are very engaged with their electronics, with their cell
6 phones, with their iPads, with their laptops, they are not as
7 interested in coming into a place now where those things,
8 essentially, they don't have access to. That impacts how we
9 are able to recruit people.

10 I will talk specifically about health care. Anywhere
11 around the country as you are looking at health care, they are
12 having difficulty recruiting nurses, recruiting physicians.
13 And we are certainly no different in corrections. In fact, my
14 perspective is that it's even more difficult in corrections
15 because it's not the ideal work environment. So we have those
16 issues.

17 And in terms of geography, at Fluvanna in particular,
18 we are competing with two hospitals. We are competing with
19 doctors' offices. We are competing with folks who have the
20 opportunity to offer greater compensation. They have the
21 opportunity to offer greater benefits; not just salary, but
22 even more than that. They can offer different scheduling.
23 And we compete with some places that will allow you to work
24 over the weekend and you get paid for a week, will allow you
25 to work 32, 36 hours and get paid for 40 hours of work. Those

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1 are -- some of those things are not things that we are able to
2 do in the Commonwealth, because we don't control those
3 internally in the Department of Corrections.

4 THE COURT: Well, but the Commonwealth controls
5 those. Right?

6 THE WITNESS: The Commonwealth does control those.

7 THE COURT: The Commonwealth runs this prison.

8 THE WITNESS: Yes. And they have been the -- well,
9 the Department of Corrections is one of the agencies of the
10 Commonwealth; that is correct. And so we have been making our
11 case with the agencies of the Commonwealth to try and change
12 things.

13 In fact, one of the things that we have been able to
14 convince the Department of Human Resource Management -- that's
15 an agency outside the Department of Corrections -- is that we
16 needed to offer more money to attract a medical director. So
17 we have the highest salary for a state compensation for a
18 medical director. We have been asking them to provide
19 supplements for our nursing staff that are over and above what
20 most other nurses are earning in the Commonwealth. So some
21 changes are happening.

22 We have talked with the legislature. We have talked
23 with the Department of Planning and Budget. And the director
24 continues to make his case to the legislature that some things
25 need to change in terms of funding, and they are listening.

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1 So, yes, that is controlled by the Commonwealth and
2 some things are changing. It's just not controlled internally
3 to the Department of Corrections.

4 THE COURT: Okay.

5 THE WITNESS: Yes, sir.

6 BY MS. LONDOS:

7 Q Are private contractors like Armor able to be more
8 creative in some of the compensation packages?

9 A They are not only able to be more creative, they can
10 offer higher salaries than we can. They can bring on staff
11 much more quickly than we can. We have some approval
12 processes in the Commonwealth for filling positions.

13 Again, it is a way to control budgeting, but we have
14 to get approvals before we can fill some positions. We have
15 to advertise. It has to be a competitive process. So we
16 cannot have any process that looks on its face to be
17 discriminatory. So we have to advertise for a certain period
18 of time. And those things are different than a private
19 contractor who can bring on people as they choose.

20 Q Thank you. Ms. Scott, I would like to bring us back to
21 February 2016 when the Court entered the order approving the
22 settlement agreement. And I think we have established earlier
23 you were very much a part of that process. Correct?

24 A Yes.

25 Q Am I correct that you were designated immediately thereon

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1 for being responsible for taking the immediate steps to
2 implement the settlement agreement?

3 A Because health services reported to me, yes, I was
4 responsible.

5 Q Okay. And then you were involved in the national search
6 for a new director of health services. Correct?

7 A Back in 2015, when I received notice that Fred Schilling,
8 who was the health services director, was retiring, I
9 advertised the position. I interviewed several people for the
10 position, decided that they were not what I was looking for in
11 terms of qualities to both manage the settlement agreement but
12 manage health care across the department.

13 I readvertised the position, did a nationwide search,
14 engaged the American Correctional Association as well, seeking
15 candidates for that position.

16 Q And that position was director of health services.
17 Correct?

18 A That position is director of health services.

19 Q And was it your intention when that position was filled,
20 that person would be tasked with implementing the settlement
21 agreement, or being the point person, I should say?

22 A That was one -- that was a major function. And it's
23 something that I asked about in the interview, what the
24 background and skills were of the person who would take over
25 that position.

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1 Q And after a national search and then readvertising for
2 it, did you have a candidate?

3 A Yes. We hired a Virginian at that point, Dr. Steve
4 Herrick, who at that point was working at Piedmont.

5 Q And in hiring -- was hiring Dr. Herrick part -- one
6 aspect of what VDOC was doing to implement the settlement
7 agreement? Hiring somebody competent with experience to
8 execute?

9 A Yes, it absolutely was. In fact, I asked, as I said,
10 specific questions about implementing the requirements of the
11 settlement agreement. Dr. Herrick testified to his --
12 testified; pardon me -- interviewed. And he answered
13 questions related to the Department of Justice working with
14 issues at Central State Hospital and how he had managed that
15 process. So his background and his skills were very much what
16 we were looking for to manage the settlement agreement at
17 Fluvanna.

18 Q Did you talk to references and others in the community
19 about Dr. Herrick to establish his credentials and his skills
20 before hiring him?

21 A Yes, I did. In fact, for -- our background unit usually
22 does the background study for candidates for positions. In
23 this case, I made the reference checks myself for
24 Dr. Herrick's position.

25 Q And the response was?

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1 A They were excellent. I talked with an assistant
2 commissioner at Piedmont who had excellent things to say for
3 him. In fact, I have folks on my staff in the Department of
4 Corrections who actually worked for and with Dr. Herrick, who
5 also had excellent things to say about his background.

6 Q Now, Dr. Herrick didn't arrive at VDOC until March 2016.
7 Correct?

8 A March 25 was his hire date.

9 Q So before he arrived, were you the, for lack of a better
10 term, point person for the settlement agreement?

11 A I was the point person for the settlement agreement. We
12 did have an acting health services director, who is
13 Dr. Fuller, who was responsible really for managing
14 administrative processes, but I took responsibility for the
15 settlement agreement at Fluvanna.

16 Q And did you have a series of meetings from February to
17 May 2016, so for the first, say, about four months after the
18 Court entered the order, laying out the VDOC plan for
19 executing the settlement agreement?

20 A Actually, the first meeting was before the Court entered
21 the order. And I took a team of our unit heads, so had senior
22 and executive staff of the Department of Corrections. There
23 were 30 to 35 of them at any given time.

24 It was my plan to ensure that everybody understood
25 what the settlement agreement said. Looking at -- critiquing

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1 our agency, looking at what we needed to do, how we needed to
2 function, to ensure that we accomplished what was required in
3 the settlement agreement.

4 Q Now, Ms. Scott, I have put in front of you, or it has
5 been put in front of you, Exhibit 14 that has already been
6 entered into evidence. And I'm going to ask you a few
7 questions about the documents.

8 And Exhibit 14 is a series of meeting minutes that
9 stretch for a long period of time. I'm going to start with
10 Exhibit 14. It's under Tab 1, RFP 4-831.

11 A Yes.

12 Q Do you see that document?

13 A Yes, I do.

14 Q Okay. And are you familiar with that document?

15 A Yes I am.

16 Q Okay. And is that a 15-page document?

17 A Yes.

18 Q Okay. And we are not going to go through all 15 pages,
19 but I will again reference for the record it's Exhibit 14.
20 It's under Tab 1. It begins at RFP 4-831.

21 What is this document?

22 A We had the operations manager at Fluvanna capture the
23 essence of the meeting we had on February 3 of 2016. What I
24 asked people to do is talk about what we needed to do to
25 implement the settlement agreement, to talk about what our

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1 deficiencies are, what our strong points are. Do we need to
2 continue exactly as we were going? Did we need to do
3 something different? I think we began the discussion at that
4 point. Do we want to take over Fluvanna? That was part of
5 the discussion. Do we want the Commonwealth to provide health
6 care at Fluvanna? Do we want to continue with Armor and
7 continue with Armor as-is?

8 I think we began the discussion at that point of a
9 hybrid model as well so that we are the responsible parties on
10 the ground -- we are the responsible parties overall, but on
11 the ground at Fluvanna -- and use Armor as a staffing agency.
12 So we were looking at all the -- what's in the best interest
13 of Fluvanna at this point that gets us to accomplishing the
14 things that are in the settlement agreement.

15 Q And did that involve a self-critical analysis?

16 A It absolutely did. We not only criticized ourselves, we
17 criticized Armor. We were looking for, what are those things
18 that are going to create issues for the Department of
19 Corrections? What are those things that are going to create
20 issues for the delivery of health services?

21 Q Is it fair to say that the point of this document,
22 documenting the meeting of February 3, 2016, was to try and
23 put down everything that was working less than perfectly?

24 A It was not just what wasn't working, but what is working.
25 What can we build on? So it's a number of things. It's

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1 looking -- it's also looking at, how do we implement some
2 things? What do we need to do?

3 Q And if we could just flip through and -- let me ask you:
4 You said how many people were involved in this meeting, these
5 meetings? Ballpark, not exact.

6 A 30 to 35 at any given time.

7 Q And the Court heard earlier from Marsha Stanford. Was
8 she involved?

9 A Yes, she was. We invited her as one of our really
10 productive nurses, high-performing nurses, to give some
11 critical feedback to us about what the processes were at
12 Fluvanna. So she was critiquing service delivery. She was
13 critiquing documentation. She was looking at our processes to
14 make recommendations, yes.

15 Q And she was HSA, health services authority, at Wallens
16 Ridge?

17 A At Wallens Ridge State Prison, yes.

18 Q And Wallens Ridge is located where?

19 A It's located in Big Stone Gap.

20 Q Okay. And it has close to 900, 1,000 offenders?

21 A Off the top of my head, I don't remember, but yes. It's
22 a significant male institution. It's one of our maximum
23 security facilities.

24 Q Did you discuss -- and I'm looking on page 3 of that
25 report. Was there a discussion about transitioning from LPNs

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1 to RNs?

2 A Yes.

3 Q And so that was a discussion early on. Correct?

4 A That's correct.

5 Q Was there a discussion about recruitment and hiring on
6 pages 4 and 5? And again, I'll -- just to give the Court an
7 idea of the issues that were discussed.

8 A Yes. And those were specifically related to how we were
9 going to provide service under the different models.

10 So if we were to take over delivery of -- direct
11 delivery of services at Fluvanna, what did we need to do to
12 make that happen? And so we looked at, how do we draw people
13 into corrections? So we looked at job fairs, advertisements.
14 We looked at if we were going to do some contracts and not
15 others so that -- I mean, we have individual contracts, some
16 with physicians, some for dialysis, some for imaging. Those
17 sorts of things. So we started looking at what the issues
18 were.

19 You'll see we talked about sign-on bonuses and
20 referrals. Can we entice some people to our agency by paying
21 them to come work for us? Can we entice other people to
22 recruit for us by paying sign-on bonuses?

23 We talked about bringing in community stakeholders,
24 so looking at those people in and around Fluvanna County to
25 see what impact they would have on bringing people to the

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1 facility. We realized we had an image issue at Fluvanna, and
2 bringing in the stakeholders would help us do that. So we
3 were exploring lots of different ways to make that happen.

4 Q And on page 9, was there a discussion about a plan for
5 training?

6 A Yes. And what happened with this group of 30 is once we
7 start identifying those things that we would need to look at
8 if we were going to take over, but look at also in terms of
9 how we implement the settlement agreement. Certain people
10 were given responsibilities for looking at some things.

11 Training was one. We looked at recruitment. We
12 looked at compensation. So we looked at a number of things,
13 and there were leaders from that group who had subcommittee
14 meetings and making recommendations to us for how we proceed.

15 Q So these meetings generated other action plans and groups
16 of people in their various areas of expertise?

17 A That is correct.

18 Q Okay. And if I could direct your attention to page 13,
19 this is sort of, again, another summary of the different
20 strategies that -- and ideas that VDOC was exploring, I think
21 even --

22 A That is correct. Joe Walters is our human resources
23 director, and he and his staff were a part of this, along with
24 the human resources staff at Fluvanna.

25 Q And the -- the final page of this report was -- well, can

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1 you explain the final page of this report?

2 A Okay. What we wanted to do was identify those things
3 that we were concerned about. And we got feedback from a
4 number of people. The executive staff for Fluvanna was a part
5 of this process as well. And so as we had the experts -- we
6 had the Marsha Stanfords of corrections. We had the warden
7 from Fluvanna. We had our regional nurses there who provide
8 some oversight in other areas. So they were bringing
9 knowledge from other facilities about what was going on. We
10 have a contract monitor there.

11 Those people were engaged in that discussion. And
12 they were suggesting that we need to look at informal
13 complaints. In fact, I did some specific training with staff
14 myself in that regard, because we did not like the way some of
15 the staff were responding to offender complaints. It was not
16 creating a healing environment. It was also not very helpful.
17 And so that was one of the areas that we wanted to address.

18 We wanted to address the pill line. We tried
19 different things to address that. Sick call, medications not
20 being received, chronic care; we knew we had issues in those
21 areas. And we were talking about how we were going to address
22 those and talking with Armor. Those are the things that we
23 wanted to address with Armor as we were moving forward in the
24 process as well.

25 Q And then was the next time the group gathered on

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1 February 10?

2 A That's correct.

3 Q And just for the record, this is again Exhibit 14, Tab 2,
4 beginning at RFP 4-846. And the document generated in
5 connection with that meeting was 18 pages long. Correct?

6 I think the record will show it's 18 pages long.

7 A Yes, that's correct.

8 Q Thank you.

9 A I had to get through 18.

10 Q Right. And this document, is it a continuation of the
11 meeting last week, identifying areas and coming up with action
12 plans for attacking each of those areas?

13 A That is correct. I asked people at the end of the
14 meeting on the 3rd to start thinking about how we do some of
15 the things that we talked about doing, what more information
16 we needed on some of the things that we had mentioned in that
17 meeting on the 3rd.

18 Q Okay. There is another reference to the LPN issue. And
19 you are familiar with that issue. Correct?

20 A Yes, I am.

21 Q You've had discussions, or you are aware of discussions,
22 with Dr. Scharff about the issues of LPNs doing certain tasks?

23 A Correct.

24 Q Okay. I want to be very clear: Can you advise or
25 testify to VDOC's position on that and then VDOC's reaction to

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1 Dr. Scharff's recommendation that LPNs not be permitted to do
2 certain tasks?

3 A Well, like all health care agencies, we were having
4 difficulty, or Armor -- I said "we," but Armor is part of us.
5 We certainly accept that we are collaborative in this process.
6 But they were having difficulty attracting RNs, just as we in
7 the Department of Corrections in the sites that we are
8 responsible for had difficulty attracting RNs to the
9 Department of -- to health services in the Department of
10 Corrections.

11 And so there were some things that LPNs were -- some
12 services that LPNs were providing services for in our
13 institution that Dr. Scharff took issue with. He thought that
14 there were some things that RNs should be responsible for.
15 And in fact, I asked Dr. Herrick to investigate that issue,
16 because there was some question about whether or not nurses
17 were practicing beyond their licenses as LPNs.

18 And from the research that we had -- now, we
19 certainly don't think -- as the licensing agency, we don't get
20 to make that call, but our research indicated that they could
21 do what we had asked them to. However, our position, which is
22 your question, is: Then what do we do with that information?

23 We certainly did not get into any dispute with
24 Dr. Scharff about that. If his position was that he wanted
25 RNs doing it, then that's what we were directing our people to

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1 do.

2 Q Okay. And was that in your ongoing efforts to reach
3 total compliance with the settlement agreement?

4 A That is correct.

5 Q And that was your goal. Correct?

6 A Yes. That is correct.

7 Q As you were having these first few meetings that you've
8 discussed, did you continue to believe that this was going to
9 be a three- to four-year process to reach complete compliance?

10 A Yes, I did.

11 Q If I could direct your attention to page 15 of that
12 document. That's RFP 4-861. I just note -- I will wait.

13 A Yes.

14 Q The heading is "Incremental Process." Is that consistent
15 with --

16 A It's consistent with my thinking that this was going to
17 take some time. But, again, it's my belief just based on my
18 history that things don't change overnight. And we were
19 looking at, what things did we need to see to suggest to us
20 that things were changing and things were improving?

21 Q Okay. And I just -- the efforts in these early months to
22 address the terms of the settlement agreement, were they just
23 getting together every few weeks and have a meeting, or were
24 there people taking action and investigating and moving
25 forward on the items identified in these documents?

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1 A Absolutely. And we continued some engagement with Armor
2 in this process. So we were making recommendations to them
3 for things that we wanted to see, things that we suggested
4 change. We were looking at ourselves as an agency about
5 things that we needed to do as well.

6 We got our senior staff out. We had Dr. Fuller, who
7 is our chief pharmacist at Fluvanna, offering assistance. I
8 think we asked for some additional training from Sapphire for
9 managing meds and documenting that information. We had our
10 regional nurses, as I indicated. They were there on the
11 ground offering suggestions.

12 Q If I could turn your attention to the Tab 3 in
13 Exhibit 14. That reflects your meeting of February 23, 2016?

14 A Yes.

15 Q That's the third formal meeting of this large group of
16 people that you had convened?

17 A That is correct.

18 Q And if you will turn on the second page of that document,
19 there's discussions about hybrid, and then at the bottom of
20 page 3, the hybrid and taking over. Can you explain what the
21 analysis was or what the discussion was at that time near the
22 end of February, February 23 in particular?

23 A Again, we were still talking about what makes sense in
24 terms of accomplishing what we wanted to accomplish at
25 Fluvanna.

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1 We had subcommittees meeting after the meeting on the
2 3rd. They were reporting back about things that they saw.
3 And we had not made any decision at that point, but we were
4 still looking at what the possibilities were. So looking at,
5 is there a combination of Armor and us working together to
6 deliver health services, armor providing health services
7 alone, or again, corrections taking over completely?

8 Q And if I could direct your attention to page 10 of that
9 report. And I'm going to -- does that reflect a meeting that
10 was held on that same day with Armor?

11 A That's correct. We met at the gym. I believe that was
12 the meeting at the gym. And we shared with them what our
13 discussions had been, talking with them about what our
14 expectations are, and talking about the settlement agreement.

15 Q And -- well, your expectations vis-a-vis the settlement
16 agreement?

17 A Right. Correct.

18 Q Correct. And how would you characterize Armor's reaction
19 to the requests and, really, demands made by VDOC throughout
20 this process?

21 A In this meeting on the 23rd and at every meeting
22 afterwards, every engagement that I have had with Armor, they
23 have been very collaborative. All of our meetings have -- I
24 mean, we have been critical about some processes, and they
25 have been responsive.

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1 When we said we didn't have enough staff, they
2 started looking at how to address that. When I asked them to
3 meet with us, there was never any question about that. I
4 found our relationship collaborative. And until today they
5 continue to work with us when we are raising issues.

6 Q If I could direct your attention to the sixth tab, which
7 is -- reflects the meeting of March 23, 2016. And that's at
8 RFP 4-803. Are you there?

9 A I am there, yes.

10 Q Okay. And if you could turn to page 2 of that document,
11 can you tell the Court what this document is? And for the
12 record, it's RFP 4-805.

13 A Those were the goals that we were looking at. These were
14 the things that we were evaluating as an agency. So looking
15 at staffing, looking at the nurses' training, looking at desk
16 procedures.

17 One of the things that we wanted was to be sure that
18 our nurses understood how they operated inside of our
19 facility. So wanting desk procedures documented so anybody
20 who comes in -- again, as I think I testified earlier, we had
21 a lot of agency nurses there. Wanted to be sure that
22 everybody understands what the expectations were in terms of
23 their provider.

24 Let's see. Charts. Documentation was one of the
25 things that we looked at. Medications had been an issue. So

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1 we looked at ordering medications and ensuring that
2 medications were available.

3 Sort of generally, those are the kinds of things that
4 we said we wanted to see -- we wanted to see some substantial
5 improvements on, substantial accomplishments in terms of
6 whether or not we were going to remain with Armor or we were
7 going to do something else in terms of providing health care
8 at Fluvanna.

9 Q Was there another meeting -- and I'm directing your
10 attention to Tab 8 at RFP 4-817. Was there another meeting on
11 April 14?

12 A Yes.

13 Q Okay. And was there a discussion with Armor about -- in
14 fact, I think it may have been before this meeting, but about
15 expectations and a deadline for elevating performance?

16 A That is correct. And we -- the deadline, I think -- back
17 on the measurable -- was April 30 that we wanted to see
18 substantial improvement.

19 Q And that was conveyed to Armor?

20 A Yes.

21 Q And what was the result of that?

22 A It was our assessment at the end of the process -- we had
23 those folks who were involved in the meeting, but basically
24 the clinical staff were, I think, the leaders in this process,
25 giving feedback on what they saw and whether or not they

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1 believed that Armor was moving in the right direction. And it
2 was our expectation that by April 30 they would complete their
3 assessments and share with us what their thinking was about
4 how they were moving forward.

5 Q And just to be clear: While you were a deputy director,
6 you were relying upon the clinical management team employed by
7 VDOC to advise you on that?

8 A That is correct.

9 Q So the decision was made approximately when to continue
10 with Armor and not either take over or adopt the hybrid model?
11 When was --

12 A It was made after the 30th, because the clinical reports
13 were due to me after April 30. And their recommendations were
14 due at that point.

15 Q So in May of 2016 is when that decision was made?

16 A That is correct.

17 Q And at that time, did you transition the primary
18 responsibility for overseeing implementation of the settlement
19 agreement to Dr. Herrick?

20 A Yes, I did, because from March 25 on, he was a part of
21 that planning process at Fluvanna. And when we decided to
22 continue with Armor, the reins were turned over to him.

23 Q Okay. Now, I would like to talk generally about the one
24 year or so from when the reins were turned over to Dr. Herrick
25 in May of 2016 until the summer of 2017, so generally that

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1 period.

2 Did you still stay involved in monitoring the status
3 and the progress of implementation of the settlement
4 agreement?

5 A Yes, I did. And just to provide a little bit of
6 background on that, of course, as we have mentioned,
7 Dr. Herrick joined the department on March 25, 2016. I'm his
8 supervisor. I had a responsibility to ensure that his
9 orientation happened to the Department of Corrections. And I
10 think as I mentioned earlier, while we have those 1,200 women
11 that we are responsible for at Fluvanna, he had a
12 responsibility for providing health care to 30,000 offenders
13 who are in the Department of Corrections. And so we spent
14 time on the road together.

15 We were traveling to Big Stone Gap and to Grundy and
16 to central Virginia, to southside Virginia. We were
17 investigating what was happening at our other facilities as
18 well. And we spent a lot of time in a vehicle together, and
19 we were talking about Fluvanna a good bit of that time. But
20 during the process, we were always meeting about Fluvanna.
21 That was the priority on our list, because that's where the
22 settlement agreement was.

23 We don't have those other -- we don't have a
24 settlement agreement anyplace else. We have some issues other
25 places, and we are addressing those issues as well, but we

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1 don't have a settlement agreement anyplace else. So Fluvanna
2 definitely got the attention.

3 Q How would you describe the support that Director Clarke
4 gave to you in your role in implementing the settlement
5 agreement?

6 A He was very supportive. There's not anything that I
7 asked of him in terms of resources that he did not agree to
8 allow.

9 Q Were there any developments generally in late 2015
10 that -- into 2016 that impacted the VDOC offender population
11 in terms of acuity levels of some of the offenders?

12 A I think what you are alluding to there is in August of
13 2015 was the death of Jamycheal Mitchell in the Tidewater
14 jail. And as a result of that, what we saw was the jails
15 asking very specifically for us to move the sicker offenders
16 from their jails into the Department of Corrections, those
17 state-responsible offenders.

18 So our numbers went up in terms of the offenders with
19 illnesses coming into the Department of Corrections.

20 Q So just so we are clear: You saw an influx of sick
21 offenders from jails coming into the VDOC system?

22 A Yes. Well, they were coming in sooner. These were
23 state-responsible offenders. So at some point in time they --
24 I'm sure some of them would have come to the Department of
25 Corrections. But with the scrutiny that jails were getting,

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1 those sicker offenders came to us much more quickly. We got
2 requests, and we responded to those and we brought them in.

3 Q And that included at Fluvanna?

4 A That included at Fluvanna.

5 Q How were you keeping updated with the progress of the
6 settlement, the implementation of the settlement agreement,
7 over that year from the summer of '16 to the summer of '17?

8 You have discussed that you had -- you were
9 communicating on a regular basis with Dr. Herrick. Correct?

10 A That's correct. So a number of things were going on to
11 keep me updated. There were regular meetings. There were
12 minutes of those meetings. Dr. Herrick and I engaged on a
13 regular basis. I visited Fluvanna.

14 Q Overall in that year, summer of 2016 to summer of 2017,
15 you were aware that there were -- continued to be some issues
16 with staffing. Correct?

17 A Yes, I was aware of that.

18 Q And with some of the clinical issues. Correct?

19 A Correct.

20 Q How did you view that year in terms of the timetable that
21 you discussed earlier of the three- to four-year process to
22 get there? Did you feel like that was part of the process?

23 A I did not expect everything to be perfect. So did I
24 expect that there were going to be setbacks? Yes, I did. But
25 we were evaluating those along the way. And I think you

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1 will -- you will see from some of the things that we did, we
2 were trying to offer some assistance. And we continued to
3 talk about, what do we do at this stage? Should we do
4 something different? So the conversation was ongoing about
5 what we did at Fluvanna.

6 We started to notice some turnover in management
7 positions. That was something that was clearly on our radar,
8 and eventually it got us to the point in '17 that we thought
9 we needed to be in charge of management of the clinical staff
10 at Fluvanna, or the nursing staff.

11 Q So I think you are referring to some developments or some
12 discussions in the summer of 2017?

13 A That is correct. There had been turnover in some -- in
14 the nursing -- the nursing supervisor's position to the point
15 that we were no longer comfortable that we could maintain that
16 leadership there, and we knew we needed to have leadership
17 staff there. And Dr. Herrick and I started talking about how
18 we'd make that happen.

19 Q And let me just back up for one minute. You are familiar
20 with what have been called the weekly meeting minutes.
21 Correct?

22 A Yes.

23 Q And I think that's in as Defendant's Exhibit 12. And I
24 believe the Court earlier heard Warden Aldridge sort of show
25 some examples of those meeting minutes.

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1 Would you get those?

2 A Yes.

3 Q Every week?

4 A I received those minutes.

5 Q And would you read those every week?

6 A Yes, I would read those minutes.

7 Q Would you read them closely? Would you study those? You
8 kept engaged with the status of Fluvanna through those
9 minutes. Correct?

10 A And let me say there that most of that was not any
11 surprise. As I said, Dr. Herrick was keeping me up-to-date.
12 So I was not reading minutes to be surprised about what
13 happened.

14 Q Okay. So let's bring us to the summer of 2017. Can you
15 tell us what happened, the discussions that happened, in the
16 summer of 2017? I think you were beginning -- beginning
17 there.

18 A Yes. Dr. Herrick had come to me because of the inability
19 to maintain the leadership, particularly for the nursing staff
20 at Fluvanna, and said, It's time for us to look at doing
21 something differently. And I certainly concurred with that
22 thinking, and we started to think about what that looks like.

23 Q And was there a change in or a departure of some
24 leadership at Armor at Fluvanna around that time? Did that
25 prompt that discussion?

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1 A There was some turnover. That's correct.

2 Q Okay. So continue with your discussions with Dr. Herrick
3 about what the options were.

4 A Well, one of the things that we talked about was whether
5 or not -- well, we had talked about whether or not we would
6 take over, but we eventually said, Let's look at whether or
7 not we should be doing things differently. And we talked
8 about --

9 MS. ELLIS: Your Honor, if I may: This is cumulative
10 of what Dr. Herrick testified about on Wednesday.

11 THE COURT: Okay. But overrule your objection if it
12 is one.

13 Go ahead.

14 A Okay. And so what we started thinking was, taking over
15 the leadership is one thing, but are there other things out
16 there that we had not considered? And so we were talking
17 about creative ideas. Are there other ways to provide health
18 services at Fluvanna that we have not considered?

19 And we started talking about offering some incentive
20 to change the thinking, to look at how we provide services
21 there. And we met with our -- my financial staff to talk
22 about what we could offer in terms of a financial incentive to
23 do that. And we settled on the \$3 million that I think has
24 been testified to as a way to get people to think differently,
25 to think creatively.

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1 We have two contractors; we have Armor and Mediko.
2 We can change their contracts. We can expand their contracts
3 with the way that they have been structured to do some things
4 without going back to do another RFP. And so we offered to
5 both of them at that point the \$3 million: Come back to us,
6 suggest if there are things that we can do more or differently
7 at Fluvanna.

8 BY MS. LONDOS:

9 Q Okay. And just to be clear, when you are saying
10 "\$3 million," that's \$3 million additional that would be put
11 into health care at Fluvanna beyond the amount already being
12 spent?

13 A That is correct.

14 Q And those discussions where you arrived at the \$3 million
15 figure, those occurred in June of 2017?

16 A We began that -- now, we -- again, we have been talking
17 about what we've seen at Fluvanna in terms of staffing. We
18 have been talking about what we have seen in terms of -- what
19 we had seen in terms of things that we want to change.

20 We started talking about the dollars that we wanted
21 to set aside at that point. So that was certainly not the
22 beginning of a discussion about changing, because that
23 discussion has continued.

24 Q Has Dr. Scharff's analysis and Dr. Scharff's
25 interpretation of some of the more subjective language in the

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1 settlement agreement played a role in the ongoing analysis?

2 A Yes. There are things in the settlement agreement that
3 are not specific. Staffing is one of them. It says "adequate
4 staffing." His notion of adequate staffing and ours aren't
5 necessarily the same. And so we are engaging all the time in
6 what it is he expects to see so that he thinks that we are in
7 compliance with the agreement.

8 Q Could you speak to, just briefly, the -- expanding on
9 that, that the evolution of VDOC's thought process on the
10 settlement agreement relied in part on the feedback that
11 Dr. Scharff was giving over time?

12 A Yes. I'm not sure what more I would say about that, but
13 we were reading his reports. We were considering his
14 criticisms of us. We were considering what he said was
15 positive. And we considered him the authority on the
16 settlement agreement in terms of what his expectations were in
17 terms of corrections.

18 Q And did you approach Director Clarke for his approval of
19 this idea of adding \$3 million?

20 A Yes.

21 Q And the response?

22 A And he did approve it. As I said, he has not denied
23 anything that we have requested.

24 Q And that was in June and July of 2017?

25 A That is correct.

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1 Q So letters -- and they are in evidence, Your Honor --
2 letters went to Armor and Mediko?

3 A That's correct. We drafted those letters on September 8.
4 I think they were actually delivered on September 27.

5 Q And the letters are in the file. But generally, what was
6 being requested of Armor and Mediko?

7 A We asked them to make some recommendations to us for
8 providing services at Fluvanna. And we were specifically
9 vague about that, because we did not want to taint what they
10 were saying. We wanted some creative ideas about providing
11 services.

12 Q And what was the response, or what was the ultimate
13 decision after receiving a response from Armor and Mediko?

14 A We decided that they were not creative ideas that had not
15 been considered.

16 Q So what did you do then?

17 A We decided -- at that point, Dr. Herrick was starting to
18 talk about taking over the leadership of Fluvanna. And he
19 came up with a model. Off the top of my head I don't remember
20 that date, but he came up with a model for leadership for
21 corrections to take over the leadership of the clinical staff.

22 Q And so to be clear, the upper level health care
23 management at Fluvanna would be VDOC employees?

24 A That is correct.

25 Q And then the -- more of the charge nurses, the line

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1 nurses, would be from agency and from Armor?

2 A There were actually three layers of supervision that
3 would have been Department of Corrections employees. And we
4 were essentially talking about using Armor as a staffing
5 agency.

6 And we had shared that information with Armor and
7 with the Armor staff there. In fact, Armor leadership met
8 with us when we met with the employees to tell them what we
9 were thinking.

10 Q And is that where Fluvanna stands today?

11 A Yes, it is.

12 Q So today, who is your warden at Fluvanna?

13 A Mr. Aldridge, Eric Aldridge, is our warden.

14 Q And the health authority and the upper level nurses are?

15 A Are Marsha Stanford and Ellen Katzman.

16 Q They have all testified today.

17 As the deputy director of VDOC with oversight of
18 health services, including health care at Fluvanna, what are
19 your feelings today about the leadership at Fluvanna?

20 A I think we have excellent people in place to lead
21 Fluvanna. But as I said earlier, staff turns over. These are
22 excellent, excellent nurses. And I can imagine people
23 recruiting them. So, I mean, we are doing things. We are
24 thinking about how we can keep them engaged at Fluvanna.
25 We're offering supplemental salary to keep them at Fluvanna.

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1 But in terms of the team that we have there now, we
2 are very pleased with them, and they are able to bring in some
3 additional staff that we have been struggling to do before.

4 Q Do you today, based upon your involvement in overseeing
5 the settlement agreement at Fluvanna, have an expectation that
6 Fluvanna will reach full compliance with the settlement
7 agreement under the leadership of Warden Aldridge and Marsha
8 Stanford and Ellen Katzman on the timetable you anticipated
9 back in February 2016 of the three to four years? Is that
10 your --

11 A It is certainly my expectation, with the caveat that I do
12 not expect perfection. Perfection does not happen in health
13 care. And if one looks at the University of Virginia, that I
14 think is sort of the flagship in providing health care, you
15 look at their patient response to services, and they are not
16 high on the list of patient satisfaction with them either. I
17 think it's what happens in health care. People are not
18 totally satisfied. So I do not expect perfection.

19 I expect to have the right staff engaged. I expect
20 to have the qualifications that we are looking for. I expect
21 us to be working hard to do that. But if I expected
22 perfection, I would be in the wrong place, because that's not
23 going to happen.

24 MS. LONDOS: The Court's indulgence.

25 At this time, I would simply like to show the witness

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1 the Commission on Accreditation for Corrections standards
2 dated December 11 through 13, 2017, from the ACA, ask her
3 to -- unless there is no objection, to confirm that this is
4 the ACA accreditation, and move this into evidence.

5 Is there any objection?

6 MS. CIOLFI: No objection, Your Honor.

7 MS. LONDOS: Okay. Thank you. And so this will be
8 Defendant's 39.

9 THE COURT: It will be admitted.

10 THE CLERK: I'm sorry, what number?

11 MS. LONDOS: 39.

12 (Defendant Exhibit Number 39 was marked and
13 received.)

14 MS. LONDOS: I would also like to move into evidence
15 a notebook of emails that were exchanged on the ADA policy
16 issue between the Office of the Attorney General and
17 plaintiffs' counsel.

18 As Your Honor knows, the settlement agreement
19 required there to be an ADA policy that was collaboratively
20 agreed on and worked on, and this is simply evidence of that
21 effort on both sides. It was disclosed previously.

22 MS. CIOLFI: And Your Honor, we do object to that.
23 The ADA has not been a subject of this hearing this week. We
24 informed defendants prior to the hearing that we would not be
25 calling Mr. Marono, who is their ADA expert, and we did not

DIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 intend to put on evidence of violations of the ADA policy.

2 MS. LONDOS: Yeah. We simply want it into evidence
3 as evidence of the defendants' efforts to comply with the
4 settlement agreement, as Exhibit 40.

5 THE COURT: Well, can't the witness just say that?
6 Do we need --

7 MS. LONDOS: Well, it was a fairly extensive process
8 with fairly extensive effort on the defendants' part. And
9 the -- this notebook --

10 THE COURT: Is that one of the problems in the case?
11 I don't recall that being one of the issues.

12 MS. LONDOS: No, certainly, but to the extent the
13 Court is being asked to hold the defendants in contempt, it is
14 evidence of the efforts made by the defendants on an element
15 of the settlement agreement.

16 THE COURT: Well, how many pages is that? Am I
17 supposed to read it? How many pages is it?

18 MS. LONDOS: It looks to be an inch and a half. It's
19 simply the evidence of the emails back and forth.

20 THE COURT: Normally, we call that smoke. Okay. But
21 it will be admitted.

22 (Defendant Exhibit Number 40 was marked and
23 received.)

24 MS. LONDOS: Thank you, Your Honor. No further
25 questions for Ms. Scott. Please answer any questions by the

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1 plaintiffs.

2 THE COURT: How did the patients -- I mean, the
3 inmates at Fluvanna, how many are these sort of medical
4 patients, medical inmates who wouldn't be there except that
5 they meet the criteria for needing more medical care than the
6 average prisoner in the general population?

7 THE WITNESS: You mean the number?

8 THE COURT: Yes.

9 THE WITNESS: Your Honor, I'm sorry. I don't know
10 the number off the top of my head. But for -- the sickest
11 inmates get moved from other -- we have three other -- four
12 other female facilities. And if they are sick, they all get
13 moved to Fluvanna. So they do -- the sicker ones get moved to
14 Fluvanna.

15 THE COURT: Well, there are other inmates there who
16 could be out in the general prison population?

17 THE WITNESS: That is correct, yes.

18 THE COURT: And you don't know the percentage?

19 THE WITNESS: I'm sorry. I do not know that off the
20 top of my head. I would not like to testify to that.

21 THE COURT: Okay. Go ahead.

22 MS. CIOLFI: Thank you, Your Honor.

23 **CROSS-EXAMINATION**

24 BY MS. CIOLFI:

25 Q Good afternoon, Ms. Scott. Now, you have been with the

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Department of Corrections since 1973?

2 A That is correct.

3 Q And you have been in your current position as deputy
4 director for the division of administration since 2002?

5 A Correct.

6 Q And so you were in this position in 2012 when the lawsuit
7 was filed?

8 A Correct.

9 Q And you -- and health care services had been moved under
10 your chain of command by November 2014 when the lawsuit was
11 settled?

12 A Correct.

13 Q And indeed, you participated in at least one of the
14 meetings regarding the settlement?

15 A With attorneys, yes. I participated in other meetings
16 with Dr. Scharff and Dr. Kohl, but yes, that is correct.

17 Q And you were also one of the deciders when Armor got the
18 2015 comprehensive health services contract?

19 A Correct.

20 Q And you were in this position in 2016 when the consent
21 order was entered?

22 A Correct.

23 Q And you were in this position in 2017 when the show cause
24 was filed?

25 A Yes. That's correct.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And do you oversee health services? Do you oversee
2 health services?

3 A Yes. I'm sorry. I thought there was more to the
4 question. Yes, I do.

5 Q And do you also oversee budget and finance?

6 A Yes, I do.

7 Q And the responsibility for ensuring that DOC complies
8 with the settlement agreement is yours?

9 A That is my responsibility.

10 Q And even at the beginning, as you testified earlier, you
11 were the point person on it?

12 A That's correct.

13 Q You supervise Dr. Herrick?

14 A I do.

15 Q And you report directly to Director Clarke?

16 A Correct.

17 Q And you are peers in the hierarchy with Mr. Robinson?

18 A Correct.

19 Q Now, earlier, before lunch, I believe you and Ms. Londos
20 talked a little bit about task analysis?

21 A Yes.

22 Q And task analysis is what the department does to create a
23 staffing plan?

24 A Yes.

25 Q And I believe you described all the things that went into

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 task analysis at the time of the 2015 RFP?

2 A That is correct.

3 Q And you recall that you were -- that you were deposed as
4 a designation by the Department of Corrections as their
5 30(b)(6) designee. Correct?

6 A That is correct, yes.

7 Q And do you know that Mr. Schilling was also deposed on a
8 variety of topics?

9 A Yes.

10 Q And Mr. Schilling was actually designated to talk about
11 the 2015 RFP. Correct?

12 A That is correct.

13 Q And that's because he was actually the person who was
14 creating the RFP and developing the contract at the time.
15 Correct?

16 A I did not have any participation in the creation of the
17 RFP. It really was the contract.

18 Q So that was Mr. Schilling?

19 A Yes. That's correct.

20 Q And he was also designated for the creation of staff
21 planning at Fluvanna?

22 A That's correct.

23 Q And that's because he is the one who oversaw the creation
24 of a staffing plan for Fluvanna since it was opened?

25 A He was the health services director. That is correct.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And so he is the one who, since it was open, was
2 responsible for overseeing the creation of a staffing plan?

3 A Correct.

4 Q Okay. And so we would expect what he says about the
5 staffing plan and the task analysis in 2015 to be
6 authoritative. Correct?

7 A I'm sorry. I didn't understand.

8 Q We would expect what Mr. Schilling says about the
9 creation of a staffing plan for Fluvanna in the 2015 RFP to be
10 authoritative. Correct?

11 A Correct.

12 MS. LONDOS: Counsel, could you tell me what
13 deposition and what page?

14 MS. CIOLFI: This is Mr. Schilling's 30(b)(6)
15 deposition at page 39.

16 BY MS. CIOLFI:

17 Q So when I deposed Mr. Schilling, I asked him:

18 "Question: Do you remember the last time that the
19 task analysis and comparative analysis was done for Fluvanna?

20 And his answer was, "Probably 2010, somewhere along
21 there." And I asked him:

22 "Question: Well, was it done in -- so can I assume
23 it wasn't done before this RFP in 2015?" And his answer was:

24 "Answer: Yes. We did not do it then." And I asked:

25 "Question: Did the staffing plan change between the

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 2015 RFP and the previous RFP for Fluvanna?" And he said:

2 "Answer: Probably some, a little bit." And then
3 later I asked him:

4 "Question: Do you recall if any changes were made to
5 the staffing plan in light of the Fluvanna lawsuit? And his
6 answer was:

7 "Answer: None, to my knowledge."

8 And so, in fact, a task analysis was not done in the
9 creation of the 2015 RFP. Correct?

10 A When I talked with him about it, he indicated that it had
11 been done. So I can't speak to that testimony, other than if
12 he was talking about -- I mean, I can't speak to it.

13 I know that we had done an emergency RFP when we
14 would have looked at staffing. Was it -- I can't answer that.
15 But when I talked with him specifically, he talked about the
16 task analysis being done.

17 Q And so his testimony at the 2015 RFP was in error when he
18 was the designee, the corporate designee, for the Department
19 of Corrections?

20 MS. LONDOS: Objection. Foundation. There is no
21 foundation. She showed him one line out of the deposition.

22 THE COURT: Excuse me?

23 MS. LONDOS: There is no foundation to ask if
24 Mr. Schilling's testimony as a whole is --

25 THE COURT: Well, she didn't ask it as a whole. She

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 was talking about a specific question and answer.

2 MS. CIOLFI: Your Honor, I'm ready to move on.

3 THE COURT: I don't see why you need to ask her about
4 his testimony.

5 MS. CIOLFI: I'm ready to move on.

6 THE COURT: Okay.

7 BY MS. CIOLFI:

8 Q Now, Ms. Scott, you have been high up in DOC for long
9 enough that you sometimes get to interact with the general
10 assembly. Correct?

11 A Correct.

12 Q And you are aware of -- that there are budget pressures
13 on the Department of Corrections?

14 A Yes, I am.

15 Q And DOC, in fact, is feeling a lot of cost pressures,
16 such as addressing a major shortage in correctional staff; is
17 that correct?

18 A We have been making requests to the legislature for
19 compensation for our staff. Numbers, we asked for years, but
20 a major shortage -- I would not testify to that, but certainly
21 we have made several requests for compensation specifically
22 for our corrections officers.

23 Q And that's compensation to attract and retain
24 correctional staff?

25 A Yes, correct.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And you asked for extra money for Fluvanna to be included
2 in the governor's introduced budget for this year; is that
3 right?

4 A That's correct.

5 Q But it was -- and that was so that you would not have to
6 eat that amount permanently?

7 A Yes.

8 Q But it was not included in the governor's --

9 A It was not included.

10 Q And so that money has to come from elsewhere in DOC?

11 A That is correct.

12 Q Now, the cost of the health care at the department has
13 been a topic of conversation with the legislature. Correct?

14 A It has been.

15 Q And the legislature has been critical of the cost of
16 health care at DOC?

17 A Yes, it has.

18 Q And in your deposition, you said "indicted" was too
19 strong a word. Right?

20 A Yes, I did, but -- yes.

21 Q What word would you use?

22 A We have been criticized, yes.

23 Q And, in fact, the department has been directed by a
24 number of legislators to look at being more cost-efficient in
25 providing health services to offenders, to the women at

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1 Fluvanna?

2 A There have been several studies. A couple have been done
3 by VCU. Certainly one was done internally. I think there was
4 at least one other. But, yes, we have been asked to look at
5 how we provide services and whether or not what we are doing
6 is sufficient. That is correct.

7 Q And whether you could provide them at lower cost?

8 A Yes. That is correct.

9 Q On direct, Ms. Scott, you said you wanted to create -- or
10 you wanted to follow Director Clarke's vision of creating a
11 healing environment. Correct?

12 A Yes.

13 Q And that the women at Fluvanna need to trust you; is that
14 right?

15 A Need to trust our -- if the "you" is the Department of
16 Corrections you are mentioning, yes. Absolutely.

17 Q And they don't need to see DOC as the bad guys?

18 A That is correct.

19 Q And you want them to see that DOC wants to do right by
20 them?

21 A Yes, I do.

22 Q And you don't want them to suffer?

23 A I do not.

24 Q And you don't want them to die?

25 A I certainly don't want them to die.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And you knew in 2016 that this was an urgent matter.

2 Correct?

3 A This -- I'm not sure what the "this" is.

4 Q That the medical issues at Fluvanna was urgent. That's
5 why you convened the 2016 meetings. Correct?

6 A I convened it because we needed to comply with the
7 settlement agreement. Yes.

8 Q And so the first one was on February 3. Correct?

9 A That is correct.

10 Q And somebody at the meeting notes that Fluvanna is under
11 the gun from the courts?

12 A Correct.

13 Q And that was three days before the Court entered the
14 order. Correct?

15 A That is correct.

16 Q And you thought you might terminate Armor's contract as
17 of June 30?

18 A That was one of the possibilities. Again, we were
19 exploring possibilities at that point, yes.

20 Q And there were four to five other meetings that spring
21 that you and Ms. Londos talked about?

22 A Correct.

23 Q And you actually led these meetings?

24 A Yes, I did.

25 Q And they were your meetings?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A They were my meetings.

2 Q And you convened your top people at Fluvanna?

3 A Yes, I did.

4 Q The warden, the contract monitor; all of them were there?

5 A The regional nurses, our chief physician, our chief
6 psychiatrist, our chief psychologist. We had our budget
7 people. We had our human resources people. We had our
8 procurement staff. We had the executive staff of Fluvanna.

9 Q And so you brought in your top people, not just from
10 Fluvanna, but all over the state?

11 A Correct.

12 Q Marsha Stanford?

13 A Yes.

14 Q And Bonita Blodgett [sic]?

15 A Badgett, yes.

16 Q Badgett. And they actually identified for DOC the
17 problems with the health care processes at Fluvanna as run by
18 Armor. Correct?

19 A That is correct.

20 Q And I'm showing you the February 10 meeting, page 2. And
21 your top people told you that there were problems with the way
22 Armor was responding to informal complaints?

23 A Yes. They told me that.

24 Q And they told you there were problems with how Armor was
25 running pill line?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A That is correct.

2 Q And they told you there were problems with the way Armor
3 nurses were doing sick call?

4 A That is correct.

5 Q And they found Armor committing medication errors?

6 A That is correct.

7 Q And they told you Armor was not updating the charges
8 correctly?

9 A That is correct.

10 Q And they told you Armor was mismanaging patients in the
11 infirmary?

12 A That's not the way I would characterize that, but they
13 did say that the infirmary was not up to 80 percent, the
14 standard that they set for the infirmary, yes.

15 Q Is -- and so you would conclude that, because we are
16 identifying problem areas, that the infirmary was a problem
17 area?

18 A They identified that as a problem area. That is correct.

19 Q And, in fact, there were 13 problem areas?

20 A Yes.

21 Q And so you knew at that time that Fluvanna had problems
22 with these areas. Correct?

23 A That is correct.

24 Q And your top people also told you that Armor is good at
25 making plans to fix things, but its execution is the problem.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Correct?

2 A And I think they were talking specifically there about
3 the nursing staff in execution, but yes, that's an accurate
4 statement.

5 Q And staffing is a major issue, theme running through all
6 these problem areas. Correct?

7 A Staffing that's consistent. Because Armor certainly
8 brought in agency nurses. So, I mean, there was staff there.
9 We were looking for consistent staffing. So we wanted
10 staffing on the ground, again, who knew the offenders, who
11 knew what their situations were. But they certainly had
12 staffing in the facility.

13 Q And -- but you need staffing to meet all these -- satisfy
14 all these problems. Correct?

15 A Yes, that's correct.

16 Q And they have a problem with execution of staffing; is
17 that correct?

18 A That's correct.

19 Q Okay. And so you were hearing all this from DOC about
20 the problems with Armor. Correct?

21 A I was hearing what the problems were because I was asking
22 what the problems were. Yes.

23 Q And you were also -- at that same meeting, you learned
24 that Dr. Scharff had had a problem with LPNs conducting sick
25 call?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A That's correct.

2 Q And that he wanted a plan and he wanted to see progress?

3 A That is correct.

4 Q And then you also, at that same or before that same
5 February 10 meeting, you had met with Director Clarke and
6 Mr. Robinson. Correct?

7 A That is correct.

8 Q And then together with them, you decided that June 30 was
9 too soon to fix these problems?

10 A That is correct.

11 Q And you would give Armor until October 31, 2016?

12 A Correct.

13 Q And then you met again later, in February, February 23.
14 And your top people told you that Armor was sinking fast.
15 Correct?

16 A And again, this was not censored. They were making
17 statements that I would not, and no one else challenged them
18 on the language that -- that was being used. So, yes, that
19 statement -- that statement was made.

20 Q They were free to tell you the truth about their
21 assessments of that situation?

22 A They were free to tell me their assessment, which is
23 different.

24 Q And they're your top people?

25 A Yes. That's correct.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And they also told you that DOC needs to take an
2 aggressive approach?

3 A Yes.

4 Q And they also told you "we," meaning DOC, have to be in
5 charge?

6 A Yes. That's correct.

7 Q And then on page 6, they also told you that Armor was
8 using staffing problems as an excuse?

9 A That was a comment.

10 Q And the comment also was, by your top people, that there
11 are no systems in place?

12 A Again, their judgment. That's correct.

13 Q And that "they," meaning Armor, are not managing medical
14 records properly?

15 A That is correct.

16 Q And they don't have documentation for what the nurses are
17 doing?

18 A They didn't have some documentation.

19 Q And so you knew that there were problems with Armor's
20 documentation and medical record management and systems at
21 that time?

22 A Yes, I did.

23 Q And, in fact, you knew that the staff were treating women
24 without their medical records?

25 A I knew that that was a statement made by the staff, yes.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And then later that same day, you met with Armor; is that
2 right?

3 A That is correct.

4 Q And you told Armor that your goal was for Armor to
5 succeed?

6 A That is exactly what I said.

7 Q And you told them that -- you told Armor that you would
8 not give them directives; you would just give them
9 suggestions?

10 A Yes.

11 Q And you gave them a deadline of May 1?

12 A That is correct -- well, April 30 was actually the
13 deadline, but that's correct. That's close.

14 Q April 30 is the deadline?

15 A Yes.

16 Q And May 2 was the day you made the decision?

17 A Yes.

18 Q And so Armor in response -- this is from the March 23
19 meeting. Armor, in response, they flew in a bunch of people
20 from New Jersey and Florida and other Armor sites around
21 Virginia; is that correct?

22 A Yes. That's correct.

23 Q And in March, your top people asked what happens when the
24 additional help leaves; is that correct?

25 A That's correct.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And there was no response noted in the records for this
2 meeting?

3 A There was nothing that's noted on this page.

4 Now, again, I would offer to you that we were
5 identifying potential problems. We were not looking at what
6 they were doing well. We were not looking at what was going
7 right. We were identifying what created issues or potential
8 issues for us.

9 You will also notice that none of that's quantified.
10 So was that two charts? Was that six charts? Was that 88
11 charts? That's not noted there.

12 And I did not try and filter the staff's comments at
13 that point. So if they saw it as an issue, we put it down as
14 an issue, something that we needed to follow up on. That is
15 correct.

16 Q And so your staff is questioning what's going to happen
17 when the additional help leaves. And --

18 A And rightly so, yes.

19 Q And rightly so?

20 A And rightly so.

21 Q And is leadership going to be sustainable?

22 A Yes.

23 Q And at least as of March 23, no one had a response?

24 A That is correct.

25 THE COURT: Let's take about a ten-minute recess.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 THE MARSHAL: All rise.

2 (Recess taken from 2:44 p.m. until 2:57 p.m.)

3 THE COURT: You may resume.

4 MS. CIOLFI: Thank you, Your Honor.

5 BY MS. CIOLFI:

6 Q Before the recess, Ms. Scott, we were talking about the
7 February 23, 2016, meeting with Armor wherein your top people
8 are asking questions about what happens when the help leaves,
9 and Armor didn't have a response, according to these notes.
10 Correct?

11 A That's correct.

12 Q And they asked, what's the backup plan; is that correct?

13 A That is correct.

14 Q And yet when May 2 came, you still -- you decided to
15 stick with Armor?

16 A And again, I would reiterate, we were asking questions.
17 And this was not quantified. These statements were not
18 censored. So I did not ask them to justify what they said.
19 So if they saw it as an issue, we documented it as something
20 that we wanted to follow up on. And we did that because we
21 were making assessments.

22 So I did not tell staff, if there's only one
23 instance, you can't say it.

24 Q Ms. Scott, my question was: On May 2, you decided to
25 stick with Armor?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A That is correct, yes.

2 Q And you -- these are the people you are relying on to
3 provide you the information to make that decision. Correct?

4 A That is correct.

5 Q And the -- by the way, you have not provided the
6 plaintiffs the minutes of that May 2 meeting. Correct?

7 A There were no minutes of the May 2 meeting. That was a
8 meeting with Armor leadership and myself and I did not write
9 down minutes.

10 Q So Ms. Scott, by July of 2016, you knew that there were
11 numerous reports in the media and court cases raising issues
12 with the care provided by private, for-profit correctional
13 health care contractors. Correct?

14 A I am aware of that.

15 Q And you were aware of that in July of 2016. Correct?

16 A Correct.

17 Q And you also -- and on direct, you talked about how it
18 would take -- you thought it would take four to five years to
19 be compliant with the settlement agreement. Correct?

20 A I said three to four.

21 Q Three to four years. But you also knew in July 2016 that
22 if conditions of inadequate care at Fluvanna are identified by
23 the compliance monitor and not addressed within 30 days, DOC
24 can be held in contempt of court. Correct?

25 A I remember reading that the compliance monitor could make

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 a report --

2 MS. LONDOS: Object to the extent that it misstates
3 the settlement agreement.

4 MS. CIOLFI: Your Honor, let me see if I can clear
5 this up.

6 BY MS. CIOLFI:

7 Q You recognize this document, correct, Ms. Scott?

8 A Yes, I do.

9 Q And this is a report to the general assembly from the
10 Department of Corrections?

11 A That is correct.

12 Q And it's written by VCU, but it's DOC's report. Correct?

13 A It is DOC's report.

14 Q And it was prepared on July 1, 2016?

15 A That is correct.

16 Q Or submitted?

17 A Oh, it was submitted.

18 Q Submitted to the general assembly.

19 And you read this report. Correct?

20 A I need to see the report.

21 Yes, that is a report that was completed by VCU,
22 Virginia Commonwealth University.

23 MS. CIOLFI: And for the record, I'm showing this.
24 This has been admitted as Exhibit 20.

25 MS. LONDOS: Is there any objection to the witness

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 having a copy of the document in front of her? It's a lengthy
2 document.

3 MS. CIOLFI: Your Honor, I only have one copy, and
4 I --

5 MS. LONDOS: Well, I have multiple copies. I can
6 bring one if that's acceptable, Your Honor.

7 THE COURT: Okay. But whatever you are going to ask
8 her, can't you show it on the screen?

9 MS. CIOLFI: I can. That's what I was planning to
10 do.

11 THE COURT: You can give her a copy, too. I don't
12 mind.

13 MS. ABATO: If I may approach the witness, Judge?

14 THE COURT: You may. If it's on the screen, we can
15 all see it.

16 BY MS. CIOLFI:

17 Q And Ms. Scott, you not only read this report, but you
18 helped edit it. Correct?

19 A That is correct.

20 Q And you only provided the most accurate and thoughtful
21 information to the general assembly. Correct?

22 A I'm sorry?

23 Q And you only provided -- the department only provides the
24 most accurate and thoughtful information to the general
25 assembly. Correct?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A It is certainly our intent.

2 Q And if you could look at page 17. And it starts out
3 discussing the Fluvanna ruling. Correct?

4 At the first, the top of the paragraph: "In a blow
5 to the notion that states can shift liability risk through
6 contracting, Federal District Court Judge Norman Moon's ruling
7 noted that although medical care is provided by a private
8 contractor at FCCW, the agency is ultimately responsible for
9 the well-being of the incarcerated population and cannot
10 delegate this responsibility away."

11 And that's what it says. Correct?

12 A Correct.

13 Q And can you read the highlighted portion of the report
14 that's on your screen?

15 A "If conditions of inadequate care are identified by the
16 monitor and not addressed within 30 days, DOC can be held in
17 contempt of court."

18 Q And so in July 2016, you were aware that DOC could be
19 held in contempt if it didn't cure problems with inadequate
20 care quickly?

21 MS. LONDOS: Objection to the extent that she's
22 asking this witness to give a legal conclusion.

23 MS. CIOLFI: Your Honor, I believe there has been
24 testimony about what the Department of Corrections officials
25 knew and understood about the settlement agreement, and I'm

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 just pointing out --

2 THE COURT: You can ask her if that was her
3 understanding.

4 BY MS. CIOLFI:

5 Q Was that your understanding?

6 A That is -- yes. That is my understanding.

7 Q But still, you stuck with Armor in July of 2016?

8 A And again, when we are looking at the notes that you
9 presented to me, those were statements from senior staff, and
10 that is absolutely correct. But those statements were not
11 quantified. They were not censored. They were not
12 challenged, because what we were trying to do was to get on
13 the table all of those things that may be problematic for the
14 agency. Once we had those things on the table, then we went
15 back to take a look at them.

16 Q Ms. Scott, I'm asking you -- I'm not asking you about the
17 meetings anymore. I'm asking you about after this report
18 documents problems with -- known problems with health care
19 prison contractors all over the country in media releases that
20 you said you were aware of, and after you understood the
21 urgency of complying with the settlement agreement, you still
22 stuck with Armor after July 2016. Correct?

23 A I stuck with Armor because this report does not say,
24 Fluvanna, you are inadequate. It says there are issues with
25 contractors, but I'm working just with Fluvanna. I'm working

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 with the contractor that we have at that facility.

2 Q You stuck with Armor?

3 A Yes, I did. Correct.

4 Q And then in August and September of 2016, four women from
5 Fluvanna died. Correct?

6 A I don't know that statistic, but we have had deaths at
7 Fluvanna.

8 Q You don't know about that?

9 A I know that we have had deaths at Fluvanna. I can't tell
10 you the number and the date. So I don't have that in my head.

11 Q You were reading all those minutes from the weekly
12 meetings, and you don't know about the four deaths over two
13 months in 2016?

14 MS. LONDOS: Objection. That's argumentative, and
15 that's not what this witness said. That misstates her
16 testimony.

17 THE COURT: Overruled.

18 A What I said is that off the top of my head, I can't tell
19 you how many women died on what day. I can tell you that I am
20 aware that there were deaths at Fluvanna.

21 BY MS. CIOLFI:

22 Q And still, after the summer of summer and fall of 2016,
23 you stuck with Armor. Correct?

24 A We have deaths all over the Department of Corrections.
25 And so just that someone died would not suggest that it was

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 the fault of Armor.

2 MS. CIOLFI: Your Honor, if I could ask that the
3 witness please just answer the question I've asked her.

4 THE WITNESS: I'm sorry to --

5 THE COURT: Just answer the question. The answer is
6 obvious, but go ahead. Just answer the question. You stuck
7 with Armor. Yes, that's --

8 THE WITNESS: That is correct.

9 BY MS. CIOLFI:

10 Q And you have also -- you also read the reports from
11 Dr. Scharff identifying problems with sick call?

12 A Yes, I did.

13 Q And with pill line?

14 A Yes, I did.

15 Q And with bureaucratic responses to grievances?

16 A Yes, I did.

17 Q And still you stuck with Armor?

18 A Yes, I did.

19 Q And, in fact, you don't think what Dr. Scharff -- all of
20 what Dr. Scharff puts in his reports is valid. Correct?

21 A There have been some disagreements that we have noted for
22 him that we did not agree with. That is correct.

23 Q And you disagree with his assessment that LPNs should not
24 run sick call?

25 A I disagree with that assessment, yes.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q And you also think he gives too much credit to what the
2 women whom you call offenders say to him about their
3 experiences with the health care at Fluvanna?

4 A I do not believe I have made such a statement.

5 Q Ms. Scott, can I get you to take a look at this email?
6 This is RFP 3600003377?

7 A Yes. I'm looking at that.

8 Q If you look at the bottom, does this appear to be an
9 email from you on December 9, 2016, to Dr. Herrick?

10 A That is correct.

11 Q And in which you say -- you are commenting on a report
12 from Dr. Scharff. Correct? A draft report?

13 A That is correct.

14 Q And in which you say, "This report is still full of 'the
15 offenders said' or 'I think,' not based on any objective or
16 factual data. This is concerning. I don't expect our
17 attorneys will challenge this, but if I were paying an
18 attorney, I would be grossly dissatisfied if he or she allowed
19 these personal opinions. Just getting this off my chest."

20 So, in fact, you don't regard the women's experiences
21 as factual data?

22 A That is not what I'm saying. I'm saying that we have a
23 report from Dr. Scharff that says, "I think the offender said"
24 without any basis for that. Should we accept everything that
25 someone says -- and it doesn't matter who it is -- without

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 some basis? No, I would not agree with that. But that does
2 not mean that I think anything that an offender says is not
3 accurate.

4 And you can see from some of the responses that we
5 make at Fluvanna that we do take those things into
6 consideration. I mentioned earlier today about grievances,
7 how we responded to grievances. So, yes, I do consider those
8 things.

9 That was probably made in a moment of frustration,
10 but I stand by that statement, is that if Dr. Scharff is going
11 to write a report about us, there should be some basis for
12 that.

13 Q It was a moment of frustration about Dr. Scharff's
14 reliance on what the women said in his report. Correct?

15 A It does not mean that I do not believe --

16 Q Is that correct?

17 A Yes, it is. Yes.

18 Q And then in February of 2017, Dr. Herrick sent this
19 letter to Armor. Correct?

20 A Can I see the top of that?

21 Q Certainly.

22 A Okay. Yes.

23 Q And in this letter, he outlined all the problems at
24 Fluvanna and at other sites with Armor's performance.
25 Correct?

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A That is correct.

2 Q And this is Exhibit 24. And still you stuck with Armor?

3 A That is correct.

4 Q And then in July of 2017, David Robinson comes to you and
5 tells you the warden, Jeffrey Dillman, is being transferred
6 from Fluvanna; is that correct?

7 A That is correct.

8 Q And he asks you if you would like an extra position in
9 your department; is that correct?

10 A That is correct.

11 Q And he does not show you this letter from Jeffrey Dillman
12 to David Robinson. Correct?

13 A Correct.

14 Q And this is the letter in which Mr. Dillman says,
15 "Without such resources and expertise and with the detailed
16 obligations in the settlement agreement, we are destined to
17 fail at adequately addressing the same."

18 Correct?

19 A I'm sorry. Could you lower that a little bit? I would
20 like to read the rest of that.

21 Q Sure.

22 A That is correct.

23 Q And then three women die in the space of four weeks over
24 the summer of 2017. Are you aware of that?

25 A Yes. I'm aware.

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 Q That was Ms. Liberato, Ms. Niece, and Ms. Johnson.

2 Correct?

3 A Correct.

4 Q And still you stuck with Armor?

5 A Yes, I did stick with Armor.

6 Q And then in early 2017, the show cause is filed -- I'm
7 sorry. Early September 2017, the show cause is filed by the
8 plaintiffs. Correct?

9 A Correct.

10 Q And, in fact, that's when you and Dr. Herrick decided to
11 offer them \$3 million more -- offer Armor \$3 million more if
12 they came up with a plan. Correct?

13 A That's -- no, that is not correct. That's when we put it
14 in writing. We decided that in June of 2017.

15 Q So you drafted the letter on September 8. Correct?

16 A Correct.

17 Q And it was sent in September, September 27. Correct?

18 A 27. Correct.

19 Q And the show cause was filed on September 5. Correct?

20 A That is correct.

21 Q And the solution was to offer Armor more money?

22 A The solution was to offer Armor and Mediko more money.

23 Q And then you look at Armor's plan and you say, that's no
24 plan at all. Correct?

25 A I was looking for creativity, and it did not exist in the

CROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 documents that I saw.

2 Q And it was no plan at all. Correct?

3 A I was -- again, I was looking for creativity, and it did
4 not exist.

5 Q And if you recall earlier when we talked about how
6 they -- Armor -- one of the comments from your top people was
7 that Armor could plan but not execute, isn't it the -- do you
8 recall that?

9 A I recall that, and again, I state that that was a comment
10 from one person and it's not quantified.

11 Q And it turns out that they couldn't even plan creatively
12 to fix the problems. Correct? In the fall of -- in late
13 2017?

14 A Again, I was asking them for some creative ideas. They
15 offered a plan. It was not a plan that I accepted.

16 Q And that's when you finally decided to do what was
17 suggested to you by your top people back in early 2016, to
18 have DOC take over the health care leadership at Fluvanna;
19 isn't that right?

20 A That is not correct. Because the discussion about
21 whether or not we take over Fluvanna actually came from me.
22 It was not from the groups. So as I'm presenting to the
23 group, I'm the one who said, we should consider whether or not
24 the Department of Corrections takes over Fluvanna, there is a
25 hybrid model, or we stay with Armor. That discussion was led

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 by me.

2 Q But my question is about the timing. My question is
3 about: It was late 2017 or early 2018, after you got the
4 not-creative plan from Armor, that you finally decided to --
5 that DOC should take over health care leadership at Fluvanna?

6 A That is correct.

7 MS. CIOLFI: I have no further questions.

8 **REDIRECT EXAMINATION**

9 BY MS. LONDOS:

10 Q Ms. Scott, throughout this process when VDOC has had a
11 respectful disagreement with Dr. Scharff on matters such as
12 the LPN issue, what has VDOC's decision been moving forward
13 vis-a-vis Dr. Scharff's recommendations?

14 A Whenever there has been any disagreement with
15 Dr. Scharff, we have gone with Dr. Scharff's interpretation.

16 Q And is that because VDOC intends to make -- has been
17 making progress and intends to make more progress towards full
18 compliance with the settlement agreement?

19 A And we recognize that Dr. Scharff represents the Court,
20 and so that's what we will do.

21 Q I would like just to point you to the bottom half of a
22 page that was shown to you by plaintiffs' counsel with regard
23 to the March 23, 2016, meeting minutes.

24 And, in fact, is your team that you put together also
25 noting progress that Armor has made during the spring of 2016?

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 A Yes, they are.

2 Q And just so we're clear, the comments that counsel asked
3 you about on cross-examination were comments that you elicited
4 from your top team in an effort to problem-solve. Correct?

5 A We were criticizing our functions. We were looking at
6 where the problems are, where the warts are, what we needed to
7 do to comply with the settlement agreement, but also what to
8 do to provide adequate services.

9 Q Just so we're clear, the progress of Armor is documented
10 on Bates RFP 4-809.

11 And, in fact, when your entire clinical leadership
12 team came together and you asked them what should we do at
13 this point in the spring of 2016, just before you handed the
14 reins to Dr. Herrick to take over, your clinical leadership
15 team saw improvement from Armor and thought that keeping Armor
16 was the right decision. Correct?

17 A Yes, they did.

18 Q Was your concern at the time -- or was there a concern at
19 the time that if you canceled the Armor contract at that time,
20 that would be a bigger problem on your hands?

21 A That was the October date that we talked about, because
22 we had said we expect improvement by April 30. We certainly
23 were not going to remove Armor on April 30, and we were
24 looking at a date that if we removed Armor, when we could
25 actually take over realistically, because we would have to

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 bring on our own leadership.

2 That required advertising. That required
3 interviewing. It required bringing people on, establishing
4 salaries, and we could not do that May 1 if we decided to get
5 rid of them.

6 Q And, in fact, in the spring of 2016 Armor brought in top
7 personnel from outside of Virginia and moved them into
8 Fluvanna to address the settlement agreement. Correct?

9 A That is correct.

10 MS. LONDOS: I would like to move into evidence the
11 document that plaintiffs' counsel questioned Ms. Scott on.
12 It's the -- it is?

13 Counsel tells me it's already in evidence.

14 BY MS. LONDOS:

15 Q In closing, Ms. Scott, VDOC has been criticized for
16 spending too much money on health care for inmates?

17 A Yes, we have.

18 Q And VDOC has moved forward with spending even more money.
19 Correct?

20 A That is correct.

21 MS. LONDOS: Thank you.

22 THE COURT: Just one question. One of the witnesses
23 mentioned that there was a time when Fluvanna had a great
24 health care program.

25 THE WITNESS: I'm sorry, I did not --

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 THE COURT: One of the witnesses remarked that there
2 was a time when Fluvanna had a great health care program. I
3 was just wondering: At what point did things turn around and
4 go downhill?

5 THE WITNESS: I don't know that I can answer that
6 specifically. We have had -- since Fluvanna has been
7 operational, we have had contractors at the facility. Only in
8 2012 was I aware that there were problems with the delivery of
9 services by the contractors. And so I was not supervising
10 health care at that time, but I was certainly aware of the
11 lawsuit and those allegations at that point. But I was not
12 aware prior to that time of any complaints about the --

13 THE COURT: When the lawsuit started up, were you
14 involved in the discussions about the conditions? Were you
15 involved with health care at that time?

16 THE WITNESS: In 2012? No.

17 THE COURT: When did you get involved with health
18 care?

19 THE WITNESS: It would have been the fall of 2014.

20 THE COURT: Well, were you all discussing then that
21 there were problems?

22 THE WITNESS: Yes. Yes, we certainly were, and we
23 were --

24 THE COURT: What I'm getting at is: You are having
25 all these meetings two years later in 2016 trying to identify

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 problems, but it looks like you would have been aware of the
2 problems back in 2014 or earlier.

3 THE WITNESS: Yes. And we made requirements for
4 changes. And this is -- it's really not a stagnant process.
5 It's not, you identify a problem, it's fixed, and it goes on.
6 There were highs and some problems. And so things were
7 working well, and then sometimes there were problems. But
8 that is not unusual with health care that it's not always
9 going to be at a high level, not in corrections and not in
10 hospitals.

11 THE COURT: Well, but it didn't get to a high level
12 between 2014 and -- until maybe 2016 or 2017, did it?

13 THE WITNESS: Yes, there were improvements during
14 that time. Things were getting better, and then there were
15 some hiccups. There were some things that did not work.
16 Again, that happens in hospitals. It happens in other of our
17 correctional facilities with our staff -- so it's not just the
18 contractors. It happens with corrections staff as well.

19 THE COURT: Oh, I know, but we're talking about
20 Fluvanna. I know that there are problems everywhere in every
21 hospital, and you can die in every hospital, and you get
22 mistreated, you get bad medicine, and that sort of thing.

23 THE WITNESS: And so certainly if I thought --

24 THE COURT: Anyway, we were talking about the
25 specifics here.

REDIRECT EXAMINATION OF N.H. "COOKIE" SCOTT

1 THE WITNESS: Yes, sir. And there were improvements.
2 And as I said, when I made recommendations to Armor that they
3 bring in additional staff, they always responded. When we
4 identified a problem, they were addressing those problems or
5 attempting to address those problems. So they were making
6 efforts. We worked as a team at Fluvanna --

7 THE COURT: Okay.

8 THE WITNESS: -- with the contractors. Yes.

9 THE COURT: All right.

10 MS. LONDOS: Your Honor, could my colleague
11 Mr. McNelis respond? Because there were issues from -- a fact
12 from earlier in the litigation.

13 MR. McNELIS: This is about your question, Your
14 Honor. I think I can ask the witness questions that might
15 help the Court understand what you are asking about.

16 THE COURT: Okay.

17 **REDIRECT EXAMINATION**

18 BY MR. McNELIS:

19 Q I was involved in your earlier litigation representing
20 several companies. Armor was one of them. Wasn't there a
21 company called Corizon that had a contract with the Department
22 of Corrections back in the early 2010s?

23 A Yes, that is correct.

24 Q And did Corizon have a contract wherein they abruptly
25 pulled out of the contract based on money issues in 2014?

RECROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 A That is correct. They were issued the contract based on
2 a lower bid that -- Armor was a vendor at that point. They
3 got the lower bid and they were providing services to us.
4 They realized they could not provide the services at the
5 amount that they offered, and they gave notice to us and
6 terminated the contract.

7 Q Now, back before Corizon came and got the contract, I
8 believe it was around 2011, 2012. Does that sound right?

9 A I can look. I have that with me.

10 Let's see. Corizon got the contract in May of 2013.

11 Q '13. Okay.

12 A Yes.

13 Q Before Corizon had the contract, who was the contractor?

14 A Armor.

15 Q Did Armor have a contract for a fairly extended period of
16 time, a number of years? Many years?

17 A For many years, yes. Now, there were some name changes,
18 but yes, they had it for many years before then.

19 MR. McNELIS: Thank you.

20 MS. CIOLFI: Your Honor, may I ask a question in
21 light of counsel's question and your question?

22 THE COURT: Yes, you may.

23 **RECROSS-EXAMINATION**

24 BY MS. CIOLFI:

25 Q Ms. Scott, was there -- has the care at Fluvanna always

RECROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 been provided by a private, for-profit health care contractor?

2 A Yes, it has.

3 Q You are sure about that?

4 A Well, now that you ask me, then -- my understanding is --
5 again, it was not in my division, but my understanding is that
6 it has always been provided by a contractor since the opening.

7 MS. CIOLFI: Okay.

8 THE COURT: All right. Thank you. You may step
9 down.

10 MR. McNELIS: Your Honor, we have one more very quick
11 witness to address questions the Court raised with Ms. Scott
12 that she wasn't able to answer, just real quickly on questions
13 you raised, Your Honor.

14 MS. CIOLFI: Your Honor, this is recalling a previous
15 witness. And I have already told Mr. McNelis we would be
16 willing to stipulate to the information that he is about to
17 present to the Court.

18 MR. McNELIS: I don't mind stipulating to it, but I
19 would like to do is make sure I stipulate it right. The Court
20 was asking about what percentage of the population in
21 Fluvanna --

22 THE COURT: Oh, okay.

23 MR. McNELIS: -- is general-type population versus
24 systemic illness.

25 Warden Aldridge, what is the number at Fluvanna

RECROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 currently of patients who are systemically ill versus, you
2 know, patients in the general population?

3 WARDEN ALDRIDGE: 75 percent of the population is on
4 some type of psychotropic medication. Over 40 percent receive
5 between 7 and 33 administration of meds per day.

6 MR. McNELIS: So overall, what percentage of the
7 population?

8 WARDEN ALDRIDGE: Over 60 percent.

9 MR. McNELIS: Over 60 percent. If you would be
10 willing to stipulate to that, we don't need to call him to the
11 stand.

12 MS. CIOLFI: Well, the plaintiffs will stipulate that
13 it's at least 60 percent have chronic illnesses and serious
14 health care needs.

15 MR. McNELIS: No need to call him.

16 THE COURT: All right. Do you rest?

17 MS. GRIGGS: Your Honor, at this time we would like
18 to move some exhibits into evidence.

19 THE COURT: Move what?

20 MS. GRIGGS: At this time we would like to move some
21 exhibits into evidence, if it please the Court.

22 THE COURT: I think there's -- do you have any
23 rebuttal evidence?

24 MS. CIOLFI: Yes, we do, Your Honor.

25 THE COURT: Okay. Let's call that. We will get to

RECROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 that. It's part of your case, but I'd like to get --

2 MS. CIOLFI: Your Honor, we do have rebuttal
3 evidence. There are a couple of motions to strike pending
4 regarding Mr. Welsh and Mr. Herrick's testimony, but maybe we
5 can take them after the rebuttal witness, if that's okay with
6 the Court.

7 THE COURT: All right. Let's bring the witnesses in.

8 MR. McNELIS: Your Honor, before -- I'm not going to
9 handle this witness. Ms. Griggs is. Can I just make a
10 general objection?

11 I'm unaware of any issue -- there has not been a
12 single nursing expert that we have called in this case. We
13 put a deposition in, and it was taken a month ago. A month
14 ago. There has been no new evidence from any medical expert
15 that was not disclosed before that's come up in the
16 defendant's case that would create the opportunity for
17 rebuttal. Rebuttal is a new -- we have brought up something
18 new in our --

19 THE COURT: Let's -- what is the question?

20 MR. McNELIS: What is the issue that's theirs to
21 rebut, Your Honor?

22 THE COURT: Well, I'm asking the -- that would be the
23 question.

24 MR. McNELIS: Yes, sir.

25 THE COURT: I think, that --

RECROSS-EXAMINATION OF N.H. "COOKIE" SCOTT

1 MR. McNELIS: That's the question.

2 THE COURT: -- you would ask the witness.

3 What is it he is going to rebut, or she?

4 MS. CASTANEDA: Your Honor, there has been a lot of
5 testimony over the last few days about a number of different
6 issues. There's been some things that witnesses have said
7 that are different than our previous understanding.

8 I think we would just like to call our expert back to
9 talk about a few of those things, and we will keep it short.
10 And, you know, it's hard to address this objection sort of in
11 a void without the testimony. So I would ask that the Court
12 hear it and make a decision then.

13 MR. McNELIS: Your Honor, I can't imagine counsel
14 doesn't know we are going to call her on this point, that
15 point, and that point. The reason this point is important is
16 because something new came up.

17 THE COURT: Okay. Cool it. If you are going to call
18 a witness on rebuttal, you need to tell me for what purpose.

19 MS. CASTANEDA: Your Honor, in particular, a lot of
20 the witnesses have testified about timelines for things and
21 how long things have taken or how long things should take or
22 must take. And our witness really is essentially being called
23 to rebut that.

24 THE COURT: Okay. Let's bring the witness on and you
25 can proffer it.

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 MS. CASTANEDA: And I'm sorry. We actually have two
2 witnesses. We have one of our named plaintiffs.

3 THE COURT: You can call them one at a time.

4 MS. CASTANEDA: Okay. First we are calling
5 Ms. Clarke.

6 **JACKIE CLARKE, PLAINTIFF REBUTTAL, SWORN**

7 **DIRECT REBUTTAL EXAMINATION**

8 BY MS. CASTANEDA:

9 Q Ms. Clarke, we're just going to try to keep this as short
10 as possible. So I won't belabor things, but I just want to
11 ask --

12 THE COURT: It's belaboring already. Ask her the
13 question.

14 BY MS. CASTANEDA:

15 Q Okay. I guess you'd agree that you have heard -- you've
16 been sitting here the last couple days. You have heard the
17 defendants' witnesses testify. Correct?

18 A Yes.

19 Q And you have heard them testify about how long different
20 processes take, or different changes?

21 A Correct.

22 Q Right. And do you have -- you know, based on your
23 experience as a person who has worked in troubled --
24 correctional health care, do you have some experience with how
25 long things can take to change?

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 A Yes. I have worked in multiple systems that have been
2 under some type of settlement agreement or consent decree, and
3 again, the amount of time that they are talking about putting
4 things in place again --

5 MS. GRIGGS: Your Honor, if I may, we would object to
6 this as repetitive of her earlier testimony.

7 THE COURT: What?

8 MS. GRIGGS: Ms. Clarke has already testified about
9 this in plaintiffs' case in chief, Your Honor.

10 THE COURT: Has she?

11 MR. McNELIS: Yes.

12 THE COURT: Did she testify as to this?

13 MS. CASTANEDA: Yes.

14 THE COURT: I know she testified.

15 MS. CASTANEDA: I'm just trying to lay a quick
16 foundation for the questions I'm about to ask.

17 THE COURT: All right. Go to the specific question.

18 MS. CASTANEDA: To the specific questions? Okay.
19 Straight to the specific questions.

20 BY MS. CASTANEDA:

21 Q Was there some testimony about a CQI process or trying to
22 evaluate and fix things?

23 A Yes. It was clear early on what the settlement agreement
24 was, and throughout the last two days, comments that they were
25 evaluating and it took time to put system in place.

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 Again, the length of time that they spent on putting
2 a CQI system in place throughout Scharff's reports -- again,
3 he recommended putting a sick call system in place, not having
4 NPL -- LPNs conduct sick call -- that continued for over two
5 years before they decided not to have the LPNs conduct sick
6 call, which again, they were working them outside the scope of
7 their license.

8 MS. GRIGGS: Objection. Move to strike, Your Honor.
9 Assumes facts not in evidence, and is previously covered on
10 direct. Covered in all of the expert reports in advance of
11 this hearing, Your Honor.

12 THE WITNESS: I believe both witnesses today --
13 Ms. Seabert mentioned that.

14 MS. GRIGGS: The Court hasn't ruled on it.

15 THE COURT: Okay. Was this not covered earlier?

16 MS. CASTANEDA: Right. So the question is the
17 timeline.

18 THE COURT: Okay.

19 BY MS. CASTANEDA:

20 Q So how long should that take to fix, could that take to
21 fix?

22 A It should not take long. It's something that you put in
23 a policy. You have a policy to say --

24 THE COURT: Well, it's not really -- some say it
25 takes a long time, and some say it doesn't take long. They

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 could both be talking about the same thing, depending on how
2 long they're going to live. I mean, it's not really -- how
3 long would it take? I mean, that's not -- you know, "not a
4 long time" doesn't tell me much, and "a long time" doesn't
5 tell me much.

6 BY MS. CASTANEDA:

7 Q Right. So how long, a number of days or months?

8 A I think that's something that they could easily put into
9 place in less than 60 days.

10 Q All right. How about fixing the issue of delivering care
11 through food ports? How long should that take? A number of
12 days or months?

13 A Again, that's something that can be a quick seatbelt fix
14 that -- again, a policy decision not to have medication
15 administered through a food port is a quick fix. It's a
16 policy decision. It is not allowing the nurses to provide
17 substandard care. It is a quick fix.

18 MS. GRIGGS: Your Honor, if I may, we would ask the
19 Court if we could proffer to the Court -- and in it's in
20 evidence already for identification purposes only --
21 Ms. Clarke's initial expert report.

22 All of these issues are in there, Your Honor. These
23 have been on the table since March 15 of this year, when she
24 wrote her expert report. She testified about them in our case
25 in chief. And this is just complete -- it absolutely is

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 bolstering, coming back after our case is rested.

2 THE COURT: She is not permitted on rebuttal just to
3 repeat what she already testified to.

4 MS. CASTANEDA: I don't believe she talked about
5 specific timelines, months or days.

6 THE COURT: I don't recall that she did, either.
7 So...

8 MS. GRIGGS: But, Your Honor, the issues were
9 addressed.

10 THE COURT: Okay, but if the witness took the stand
11 and said something contrary to what she has evidence of and it
12 impeaches the witness, this is the time she can testify to it.
13 Whether she testified or could have earlier, the purpose is
14 impeachment.

15 MS. GRIGGS: If I may, Your Honor -- the only thought
16 I would offer on that, Your Honor, is --

17 THE COURT: Well, I don't know why this is so
18 critical, but if she has already said it --

19 MS. GRIGGS: If I may, Your Honor, with all due
20 respect, this is what this case has been about from day one.

21 THE COURT: Okay. But if we take -- if we get her
22 off the stand in about five minutes, you know, we won't be
23 here for another week.

24 MS. GRIGGS: Thank you, Your Honor. We will just
25 note our objection to this entire line of testimony.

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 THE COURT: All right. Go ahead. Let's move on.

2 BY MS. CASTANEDA:

3 Q So I believe I was asking you how long and the amount of
4 time would it take to fix the issue of delivering care through
5 the food port. Like days or months?

6 A Again, I think that would take 30 days, 45 days. It's a
7 policy decision. You already have the two officers with the
8 nurses at pill line. Again, it's a policy decision. It's a
9 supervisory issue.

10 Q There has been some testimony about -- in fact, a lot of
11 testimony, I think, from a lot of witnesses, about staffing
12 levels and how hard it's been to get the staffing in. How
13 long do you think that should take to fix?

14 A I think that they have showed over the past two days with
15 the nurses, that they have testified the past few days, that
16 they have been able to increase their staffing. They have
17 been able to get the registered nurses in. So, again, they
18 have shown they have been able to do it in the past two or
19 three months. So, again, that's something that they have been
20 able to do recently but didn't do it in the past.

21 Q And based on the testimony you have heard, do you have
22 any concerns about their ability to sustain that change?

23 A The concern that I have is in -- again, in my experience,
24 when you are only relying on registry dollars, registry
25 dollars are not permanent. They are temporary.

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 I understand that they got approval for this
2 \$3 million, six months. Once that \$3 million is gone, unless
3 that 3 million is turned into state positions that they can
4 hire state staff, there is no guarantee that once the pressure
5 is off that those staff will be gone. So again, the intent of
6 what they are trying to do now, they won't be able to sustain
7 it.

8 Q There has been some testimony about supplies and
9 equipment and whether that's sufficient or insufficient,
10 whether the supplies and equipment are checked or not, are
11 functional or not. How long should that take to fix?

12 A Again, that's something that should be a very quick fix.
13 You need a policy. You need the expectation. You need a
14 staff that's assigned to do that to ensure that your par
15 levels are up to a sufficient level, and someone responsible
16 to do it. And again, that's something that could be a very
17 quick fix.

18 Q How quick?

19 A I say that's something that's another 30 days, 45 days to
20 fix.

21 Q There has been also a lot of testimony about emergency
22 equipment and emergency response. And, you know, I believe
23 there was an example from Dr. Gable's testimony yesterday.

24 Can you comment on how long -- on what that was and
25 how long that should take to fix?

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 A Yes. I believe Dr. Gable mentioned yesterday that
2 April 18th there was still an issue in the infirmary where the
3 nurse -- there was an emergency, and they couldn't find a
4 backboard.

5 I also believe Mr. Herrick sort of attributed the
6 issue of me wanting suction machines out in the housing unit.
7 Again, I was just noting in my report that they weren't there,
8 but it was their staff that had recommended that. And I was
9 just noting that they weren't there.

10 The issue with emergency equipment -- regardless of
11 what the facility wants, the issue is that everyone needs to
12 know where the emergency equipment is, who is responsible at
13 the time that there is an emergency to bring the emergency
14 equipment, and who is assigned to do it.

15 So, again, as recently as April 18, the staff in the
16 infirmary did not know at the time of an emergency.

17 Q And there has also been a lot of testimony about
18 medication supply or pill line dispensing medications. How
19 long should that take to fix?

20 A I would also like to address the fact that Mr. Herrick
21 questioned, did I know the difference between dispensing and
22 administering medications. So I would like to clear that up
23 once again, that I know the difference. And again, maybe the
24 department needs to look at their own regulations.

25 The difference between dispensing medication versus

DIRECT REBUTTAL EXAMINATION OF JACKIE CLARKE

1 administering medication is the act of taking medication from
2 one container --

3 Q So you mean like these containers?

4 A Yes.

5 -- and taking them from one container and putting
6 them into another container, which would be the yellow
7 envelopes that say, then, label with the patient's name, date
8 of birth, housing location. That act of labeling and
9 packaging is the act of dispensing.

10 Q And what if they take it and put it directly into the
11 cup?

12 A The act of putting the medication from the bottle to the
13 cup is perfectly fine. That's still prepouring, but that is
14 not dispensing.

15 Q And how long would those issues -- I mean, so there is
16 the dispensing and prepouring. There was also, I think, maybe
17 some testimony about inaccurate charting. So how long does
18 that take to fix?

19 A Again, that could be a training issue. I believe because
20 they have so many nurses and not adequate training for them to
21 know the system -- I think they said in Gable's testimony just
22 yesterday, the difference between the MARs was the M versus
23 the N.

24 It's clear that there's still some concerns about the
25 medication MARs, and that may be due to insufficient training

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 for the nursing staff; they are not being trained because
2 there are so many registry nurses and not enough supervisors
3 to provide adequate training. So, again, that is a training
4 issue. That's a supervisory issue. But, again, that's
5 something that could be fixed with training and supervision.

6 Q All right. And how long would it take?

7 A Again, with the new supervisors they have, probably 60 --
8 30 to 60 days.

9 Q I believe Dr. Herrick testified on Wednesday about DOC or
10 people at DOC maybe being confused about what the settlement
11 agreement required. Can you talk about that?

12 A Yes. Again, I believe they hired him because he had
13 experience with a settlement agreement. So they shouldn't be
14 surprised. When I read the settlement agreement, it's not
15 unclear. It's clear on what they were required to do.

16 I believe the issue was that they really didn't feel
17 that they really had to do it. Not until --

18 THE COURT: These are opinions beyond.

19 THE WITNESS: Okay.

20 MS. CASTANEDA: Thank you. That's all.

21 **CROSS-REBUTTAL EXAMINATION**

22 BY MR. McNELIS:

23 Q Ms. Clark, we haven't met. My name is Ed McNelis.

24 You have been here, ma'am, all week?

25 A Yes, I have.

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 Q What is your regular job? Where would you be if you
2 weren't here in court? Would you be working?

3 A I would be working.

4 Q Okay. And what did you do back at work to take care of
5 your absence for a week?

6 A I'm on vacation.

7 Q All right. And, ma'am, how much did you charge the
8 plaintiffs to be here all week?

9 A Oh, well --

10 MS. CASTANEDA: Your Honor, I'm not sure why that's
11 relevant.

12 MR. McNELIS: It goes to bias, Your Honor.

13 THE WITNESS: Oh, you want me to -- I can answer
14 that.

15 BY MR. McNELIS:

16 Q Yes.

17 A I charge 250 an hour.

18 Q Okay. You charge -- how many hours a day have you
19 charged?

20 A Oh, I haven't decided yet.

21 Q Okay. Now, after court --

22 THE COURT: Wait. Wait. This is black-letter stuff.
23 I mean, you don't object to this type of thing.

24 Go ahead.

25 BY MR. McNELIS:

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 Q \$250 an hour. Ma'am, how many hours a day have you been
2 billing while you have been here?

3 A I haven't added it up yet.

4 Q Now, after the court is over, there have been meetings at
5 the Omni Hotel in the Preston Room. And you have been
6 attending those meetings, haven't you, ma'am?

7 A Yes, I have.

8 Q And they're dinner meetings; is that correct?

9 A No, they are not dinner meetings.

10 Q Are you billing for the time you spend at the Preston
11 Room every night?

12 A No, I'm not.

13 Q Okay. What time do you start billing? When you get to
14 the courthouse?

15 A Courthouse.

16 Q So eight, nine hours a day, times 250?

17 A Possibly, yes.

18 Q Ma'am, the food port thing you were just talking about,
19 Dr. Scharff has not found in his reports that providing care
20 for the food port is a noncompliance issue with the settlement
21 agreement, has he?

22 A I don't know if he has found that that's a noncompliant
23 issue. I'm telling you that is a substandard of care issue.

24 Q Dr. Scharff has not cited that --

25 THE COURT: Well, hurry up and see if it can be fixed

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 in, I don't know, 30 to 60 days.

2 MR. McNELIS: I'm just trying to make the point --
3 sorry, Your Honor.

4 THE COURT: It doesn't make any difference. I mean,
5 we talked about whether it's good or bad --

6 MR. McNELIS: Yes, sir.

7 THE COURT: -- or indifferent. But...

8 BY MR. McNELIS:

9 Q Now, you got to see the testimony of Nurse Katzman and
10 Nurse Stanford, haven't you?

11 A Yes.

12 Q Do you find Nurse Katzman to be an intelligent,
13 thoughtful nurse based on her testimony here in court?

14 A She seemed very reasonable yesterday. Yes.

15 Q Wouldn't it be fair to say she seemed pretty sharp and
16 pretty focused on what she is doing?

17 A I thought she was very reasonable yesterday, yes.

18 Q How about Nurse Stanford? Did you find her to be an
19 intelligent and seemingly knowledgeable nurse?

20 A She was the best of the two.

21 Q Okay. And do you believe that the two of them were being
22 honest when they told Judge Moon that they are working hard
23 and they believe that morale is starting to come around at
24 Fluvanna?

25 A Oh, I believe they have good intentions and they are

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 trying to fix that facility. I do believe that.

2 Q And do you believe they are going to succeed?

3 A I believe that right now, given the resources and
4 attentions that they are being provided now, that they are
5 making progress. The concern is, will they continue to have
6 the resources if there is not court intervention?

7 Q What evidence -- and this is an open -- I'm on
8 cross-examination. I'm going to ask you this question.

9 A Okay.

10 Q Please tell me what evidence you've heard -- you have
11 been here all week in this courtroom -- what evidence have you
12 heard that anyone has been deprived resources?

13 A Well, I believe that Herrick said that when he took the
14 job, he had carte blanche. He could do whatever he wanted to
15 fix the system. He was never told no, that he can have
16 anything he wants.

17 But when it really came down to it, he had to write
18 letters to say the house is on fire to really get resources.
19 So the reality is, he couldn't get whatever he wanted. So
20 again, that's an example of not being able to get what he
21 wanted.

22 Q What was he denied?

23 A Staff.

24 Q Please tell me what testimony there was that he was
25 denied staff because of resources.

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 A His email -- I mean, his testimony Wednesday.

2 Q You are saying -- you are saying -- you sat in this
3 courtroom. You are saying today in the witness stand that
4 Mr. Herrick testified yesterday --

5 A Wednesday.

6 Q -- Wednesday, excuse me, that he was denied -- and
7 "resources" is a euphemism. Money. Right? That's what we're
8 talking about?

9 A Yes.

10 Q He was denied money for staffing? Is that your
11 testimony, ma'am? That's what you say he said.

12 A No. I said that he had to do a purchase order for a
13 contract when he had to put extra stuff in his purchase order
14 to say that he is concerned about the care, the nursing at the
15 facility, that things were getting out of control, all of that
16 in an effort to get the resources that he needed to get the
17 contract for the extra -- I don't know what they called it,
18 but the extra money for the nurses, for the extra contract
19 staff that they are utilizing at the facility now.

20 Q And did you hear him say that they got the extra
21 \$3 million approved?

22 A Yes, by using those words.

23 Q So the resources were not denied, were they?

24 A Right. But he had to put those type of words in the
25 contract -- in that procurement request to get the contract.

CROSS-REBUTTAL EXAMINATION OF JACKIE CLARKE

1 Q You also testified a few minutes ago about how the state
2 ought to get additional state staffing for the facility. How
3 many state staff positions do you have at the Los Angeles
4 County Jail?

5 A Oh, my goodness. Let's see. Somewhere -- well, they are
6 not state staffed. They are county staffed.

7 3,200 -- I think about 3,200 positions.

8 Q Does the California assembly decide county staff
9 positions, or does Los Angeles County decide county staff
10 positions?

11 A County staff.

12 Q Medical equipment. Ma'am, you saw Dr. Joshua's photos of
13 some of the very -- I'll call it -- I won't call it "state of
14 the art" -- very good equipment, as Dr. Joshua described it?

15 A I didn't see it.

16 Q I'm sorry?

17 A I didn't see it.

18 Q So you weren't in the courtroom for that?

19 A No one in the court saw that.

20 Q Oh, they didn't put that out here. I understand. You
21 didn't get to see it out here?

22 A No.

23 Q I understand. Okay. Never mind. I can't ask you
24 questions about that.

25 Pharmacy dispensing issues. Dr. Scharff has not

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

1 found dispensing of medications -- the distinction you are
2 making between passing them out and dispensing them, he has
3 not found that to be a noncompliance issue with the contract,
4 has he -- sorry, with the settlement agreement, has he?

5 A Pill call has been an issue in every single one of his
6 reports.

7 Q Ma'am, isn't it fair to say that you are part of the
8 plaintiffs' team?

9 A No.

10 MR. McNELIS: Okay. That's all I got.

11 THE COURT: All right. You may step down. Thank
12 you.

13 MS. ELLIS: Your Honor, plaintiffs call Melissa
14 Atkins.

15 MR. McNELIS: Your Honor, can I make the same
16 objection? Ms. Atkins, as I understand the proffers, is going
17 to come in and talk about bad health care she's received.
18 Now, we have already had a number of plaintiffs speak to that.

19 THE COURT: Overruled. If she's going to contradict
20 one of your witnesses, she's permitted to testify.

21 MR. McNELIS: None of my witnesses ever mentioned her
22 name once except on cross-examination.

23 THE COURT: Well, whatever. If she can contradict
24 it, it's okay.

25 **MELISSA ATKINS, PLAINTIFF REBUTTAL, SWORN**

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

DIRECT REBUTTAL EXAMINATION

1
2 BY MS. ELLIS:

3 Q Please state your name.

4 A Melissa Faye Atkins.

5 Q Ms. Atkins, are you incarcerated at Fluvanna?

6 A Yes, ma'am, I am.

7 Q When did you arrive at Fluvanna?

8 A I arrived in Fluvanna in 2001.

9 Q So you have been there for 17 years?

10 A Yes.

11 Q Do you have any chronic medical conditions?

12 A Yes, ma'am, I do.

13 Q What are those?

14 A I have got degenerative rheumatoid arthritis, and
15 recently I was diagnosed with a pyoderma gangrenosum, as well
16 as fibromyalgia.

17 Q Ms. Atkins, you are a named plaintiff in this action.
18 Correct?

19 A Yes, ma'am, I am.

20 Q And have you been in the courtroom most of this week?

21 A Yes.

22 Q Did you hear Warden Aldridge's testimony about culture
23 changes at Fluvanna?

24 A Yes, I did.

25 Q As a result of your chronic medical conditions, do you

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

1 interact often with the Fluvanna health care system?

2 A Yes.

3 Q In your interactions with the health care system at
4 Fluvanna, have you seen the culture change since 2016?

5 A I have not really seen a positive change as far as
6 medical.

7 Q Ms. Atkins, did you file an emergency grievance in
8 April 2018, just a couple months ago?

9 A Yes.

10 Q What prompted you to file that emergency grievance?

11 A I was having shortness of breath, and as the day
12 progressed it was not getting any better and it was hurting up
13 in my chest. And I was afraid of what was going on. I mean,
14 I couldn't catch my breath.

15 Q Were you evaluated by a nurse after filing that emergency
16 grievance?

17 A Yes, I was.

18 Q And what was the result --

19 MS. GRIGGS: Your Honor, we are objecting. It is not
20 rebuttal to anything that was brought up by any witness on
21 behalf of the defendants.

22 MS. ELLIS: Your Honor, there was significant
23 testimony from Nurse Stanford, Nurse Katzman, and I believe
24 also Warden Aldridge, about this new emergency grievance
25 system that was very recently put in place.

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

1 Ms. Atkins has had recent experience with that, and
2 that's what she is -- very briefly, I anticipate --

3 THE COURT: Limit it to the grievance system.

4 MS. ELLIS: Yes. Yes, Your Honor.

5 THE COURT: Okay.

6 BY MS. ELLIS:

7 Q So Ms. Atkins, I believe you said you filed an emergency
8 grievance for chest pain and shortness of breath?

9 A I couldn't -- well, yeah, I couldn't catch my breath.

10 Q And were you evaluated by a nurse after filing that
11 emergency grievance?

12 A Yes, I was.

13 Q And what was the result of that evaluation?

14 A After she did my triage, I had a fever of, like, 101.
15 And she determined that I was at the beginning of a -- like,
16 an upper respiratory infection or cold, or whatever you want
17 to call it.

18 Q And so is it fair to say, fortunately, it turned out that
19 this was not a life-threatening circumstance?

20 A Yes, ma'am.

21 Q Did you have any way of knowing that before you filed the
22 emergency grievance?

23 A No. I mean, I filed it because I wasn't able to breathe
24 as I normally breathe, and that's not something I have ever
25 had problems with, is breathing. So it scared me.

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

1 Q Were you charged \$5 for filing that emergency grievance?

2 A Yes, I was.

3 Q Did you try to get that charge refunded?

4 A I did.

5 Q As part of your efforts to get that charge refunded, did
6 you meet with a health care administrator at Fluvanna?

7 A Yes, I did.

8 Q Can you describe that meeting?

9 A When I first went in, he was --

10 THE COURT: Well, isn't it the policy -- the policy
11 is that they are charged the \$5 after, if it doesn't turn out
12 to be an emergency?

13 MS. ELLIS: Yes, Your Honor, and I believe plaintiffs
14 have put forward that that's a disincentive to women to
15 seeking emergency care, when they can't -- they can't make
16 that determination.

17 THE COURT: Okay. Let's go ahead and get it. I'm
18 sorry.

19 BY MS. ELLIS:

20 Q Can you please describe that conversation with the
21 administrator?

22 A Well, when I first went in, he was reading the grievance.
23 And he chuckled to himself. And to me, I didn't see anything
24 funny over the fact that -- I mean, I sincerely at that point
25 in time when I put it in, I felt like I needed to be seen.

DIRECT REBUTTAL EXAMINATION OF MELISSA ATKINS

1 And to put in a sick call, that's at least 48 hours until I
2 would be evaluated.

3 Q Did the administrator say anything to you about when it's
4 appropriate to file an emergency grievance?

5 A Yes. Actually, he said that the instances they use to
6 determine whether it's an emergency is if you're bleeding or
7 you are unconscious.

8 Q Was this interaction typical, in your personal
9 experience, of interactions with the health care system at
10 Fluvanna?

11 A With the majority of it, yes.

12 Q Ms. Atkins, you testified you had been at Fluvanna for 17
13 years. Do you remember when the settlement agreement was
14 implemented?

15 A I do.

16 Q Do you have changes that you hope to see as a result of
17 that?

18 A Yes.

19 THE COURT: Wait a minute. Let's stick to -- this is
20 getting out of line. Rebuttal is rebuttal, not --

21 MS. ELLIS: Thank you, Your Honor. I will just ask
22 one more question in rebuttal for Ms. Atkins.

23 BY MS. ELLIS:

24 Q Ms. Atkins, did you hear Dr. Joshua testify this morning
25 regarding the condition of Fluvanna during his visit?

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 A Yes, I did.

2 Q And did you see some of the pictures that he showed?

3 A I seen a few of them on the monitor there, yes, ma'am.

4 Q Were you housed in the infirmary for a few months during
5 last year?

6 A I went in in November, and I left February 21 of this
7 year, 2018.

8 Q Did you see Dr. Scharff tour the infirmary at some point
9 during that time?

10 A I did.

11 Q Was the appearance of the infirmary on the day that you
12 saw Dr. Scharff tour it the same as it was on an average day?

13 A No, ma'am, it wasn't.

14 Q How was it different?

15 A It had been cleaned thoroughly. I mean, you would know
16 when someone was getting ready to come through, because the
17 cadre workers, or the housekeepers, whatever you want to call
18 them, they would be back there putting in extra hours.

19 A couple of ladies aren't able to take care of their
20 normal hygiene. And no longer than I was in the infirmary, I
21 learned when something was going on, because you would see
22 both of them being up and being bathed.

23 MS. ELLIS: Thank you, Ms. Atkins.

24 THE COURT: All right. Go ahead.

25 **CROSS-REBUTTAL EXAMINATION**

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 BY MS. GRIGGS:

2 Q Good afternoon, Ms. Atkins. Ms. Atkins, have you ever
3 had insurance outside of the correctional facility, health
4 insurance?

5 A Yes, ma'am.

6 Q Have you ever had to pay a co-pay for any of the health
7 care that you have had?

8 A Yes, ma'am.

9 Q Ms. Atkins, have you been transported on numerous
10 occasions to the University of Virginia for care for various
11 illnesses and injuries that you have suffered?

12 A Not injuries, but illnesses, yes, I have.

13 Q Well, if I understood correctly, when you were coming to
14 the hearing this week, you were concerned about injury to your
15 leg from --

16 MS. ELLIS: Your Honor, I'm going to object. This is
17 outside the scope of what I asked Ms. Atkins about.

18 THE COURT: Overruled. Go ahead.

19 BY MS. GRIGGS:

20 Q Were you concerned about some injury to your leg? And I
21 might be misunderstanding.

22 A The -- no. The injury is actually an ulcer that is
23 healed up, and I was told by UVA to have no trauma at all to
24 it. So therefore, where the shackles are, it would rub where
25 the ulcer is now healed over.

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 Q Okay. So that ulcer did heal?

2 A Finally, thankfully, yes.

3 Q Okay. And you have been taken to UVA for multiple
4 illnesses throughout your time that you have been at Fluvanna?

5 A I have been treated by rheumatology there, as well as
6 orthopedic, yes, ma'am.

7 MS. GRIGGS: Those are all the questions I have, Your
8 Honor.

9 THE COURT: All right. Thank you.

10 MS. ELLIS: No redirect.

11 THE COURT: She may step down.

12 MS. GRIGGS: Your Honor, we just need to move our
13 evidence in.

14 Your Honor, we would proffer to the Court the
15 de bene esse deposition of James Welsh, the RN, and the
16 exhibits that were associated with it. My understanding is
17 that the -- Exhibit 1 we would only proffer for
18 identification, because it's his expert report -- all the
19 expert reports in the case have been proffered for
20 identification purposes only -- and the rest of the exhibits
21 are otherwise proffered for admission based on his deposition.

22 It's our understanding that other than Exhibit 1,
23 there was no objection to the exhibits, although there was
24 objection to the de bene esse deposition. We have prepared it
25 as required by the plaintiffs with our portion of the -- with

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 their objections retained.

2 THE COURT: Okay.

3 MS. CASTANEDA: And Your Honor, the plaintiffs would
4 just, as defense noted, renew their objections to the expert
5 testimony of Mr. Welsh. Again, like the other experts, we
6 don't dispute that Mr. Welsh has qualifications, but we
7 dispute whether his opinions are helpful to the trier of fact
8 and whether they are based on proper information.

9 MS. GRIGGS: Your Honor, we would move these in as
10 Exhibit 40 and Exhibit 41, if we may.

11 THE COURT: All right.

12 MS. GRIGGS: 41 and 42, it would be. I apologize,
13 Your Honor. 41 and 42. I apologize.

14 (Defendant Exhibit Numbers 41 and 42 were marked and
15 received.)

16 MS. GRIGGS: Oh, the -- so the -- James Welsh's
17 deposition is on this disk, Your Honor.

18 These are also medical records that are being
19 admitted into evidence based on the medical records that the
20 plaintiffs have admitted into evidence for completeness, Your
21 Honor, under Rule 106. This is the completeness for -- and
22 it's the same ones -- we will give you a list.

23 It's -- and I'm going to say her name badly --
24 Ms. Ganiere -- I apologize -- Ms. Nichols, Ms. -- let me
25 get -- can I have that list? Oh, okay. I apologize. It's

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 right on here. Ms. Cairns, Ms. Ganiere, Ms. Nichols, and
2 Ms. Hartlove, whose records were otherwise admitted by the
3 plaintiffs. And this is for completeness purposes, Your
4 Honor.

5 THE COURT: All right.

6 MS. GRIGGS: We can give them to you. Yes, these are
7 all records that were produced. They are on our exhibit list
8 with their Bates numbers.

9 MR. McNELIS: Can you call those numbers out?

10 MS. GRIGGS: Oh. This is 43. 43 is the medical
11 records. 42 is the de bene esse deposition. And 41 is the
12 exhibits to the de bene esse deposition.

13 (Defendant Exhibit Number 43 was marked and
14 received.)

15 THE CLERK: James Welsh?

16 MS. GRIGGS: Yes. Thank you.

17 MR. HOWARD: Your Honor, we would like to request
18 that the Court accept into evidence the testimony of
19 Dr. Greifinger that was given with respect to the women whose
20 medical records were admitted as a result of Dr. Gable's
21 testimony yesterday afternoon, including Ms. Ganiere, Ms. --
22 I'm sorry, Your Honor -- Ms. Segura, Ms. Nichols, and
23 Ms. Cairns.

24 MR. McNELIS: May I respond?

25 THE COURT: Yes.

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 MR. McNELIS: Your Honor, we made it clear the only
2 reason we had Dr. Gable testify about people in
3 Dr. Greifinger's rebuttal report, which was filed late -- it
4 was filed late -- was as proffer in the event the Court was
5 going to accept it.

6 THE COURT: Okay.

7 MR. McNELIS: So to the extent Dr. Gable talked about
8 the four women in -- is it four in Greifinger's rebuttal
9 report?

10 MS. GRIGGS: There's four, but he was only asked
11 about three of them, as I recall.

12 MR. McNELIS: Okay. Those three women, to the extent
13 Dr. Gable testified about them, that was a proffer. So the
14 Court should not consider it if the Court does not consider
15 the testimony of Dr. Greifinger in his rebuttal report that
16 was late.

17 THE COURT: Okay. He's right.

18 MR. HOWARD: Your Honor, we will also note that -- I
19 think you'll recall the other day, Wednesday afternoon, that
20 we made an oral motion to strike the testimony of Dr. Herrick
21 on the grounds that he had been permitted to offer testimony
22 beyond the scope of a fact witness. We have filed a written
23 motion after being able to review the transcript. We will
24 stand on that written motion, and we will accept the Court's
25 ruling as it deems appropriate.

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 THE COURT: All right.

2 MR. McNELIS: Your Honor, can I just say that, since
3 they filed a written motion, I assume that the Court would
4 allow us the standard reply time to file the opposition?

5 THE COURT: At some point, I'm going to ask both
6 sides, of course, to submit proposed findings of fact and
7 conclusions of law.

8 MR. McNELIS: Yes, sir.

9 THE COURT: And I'm going -- I want you to detail in
10 the findings of fact, where in the record your position is
11 supported.

12 MR. McNELIS: Yes, sir.

13 THE COURT: Now, there is a question regarding a
14 visit to Fluvanna by the Court. And I'm inclined to do that.
15 And I'm not worried about -- I mean, it's not going to be part
16 of the evidence in the case, but it would help give me
17 background. Anytime you see the scene of what you have been
18 talking about, it gives you a different -- some slant on how
19 to view some of the evidence.

20 And I mean, I know you are concerned maybe it would
21 be cleaned up or something. But that's not a -- I'm not going
22 to be taking evidence. But if one of the attorneys on each
23 side want to go along, we will give you notice. There's not
24 going to be any surprise visit. So...

25 MR. HOWARD: Yes, Your Honor.

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 MR. McNELIS: Yes, Your Honor.

2 THE COURT: So we'll schedule that.

3 And what I'm going to ask you to do is next -- say by
4 Tuesday, you have a conference call with my clerk, Mr. Juhan,
5 and work out the time schedule for filing the findings of fact
6 and things that need to be done.

7 You may want to look at how long -- I don't know
8 whether you are going to need the record or not, but you are
9 going to have to find out.

10 MR. HOWARD: Your Honor, may I offer closing
11 argument?

12 THE COURT: Well, I don't think it's -- at this time,
13 I don't think it's really appropriate. I want the findings of
14 fact and conclusion of law. And if we need any further
15 hearing, then I'll -- we'll do it. But I don't think I need a
16 closing argument. I don't think it would be particularly
17 helpful at this point.

18 MR. McNELIS: Thank you, Your Honor.

19 MR. HOWARD: Your Honor, I'm awfully disappointed.
20 At 2:30 this morning, I was hard at it.

21 MR. McNELIS: Here's my outline.

22 THE COURT: Well, just store up that energy. You
23 will probably need it another day.

24 MR. HOWARD: It's all gone, Your Honor.

25 THE COURT: Okay. Anything else today?

CROSS-REBUTTAL EXAMINATION OF MELISSA ATKINS

1 MR. McNELIS: Not from the defense, Your Honor.

2 THE COURT: Okay. I appreciate y'all's patience and
3 tolerance of the Court. And anyway, thank you. You have been
4 very helpful.

5 THE MARSHAL: All rise.

6 (Proceedings concluded at 4:07 p.m.)

7

8 CERTIFICATE

9 I, Tracey Aurelio, certify that the foregoing is a
10 correct transcript from the record of proceedings in
11 the above-entitled matter.

12

13 /s/ Tracey Aurelio Date: June 15, 2018

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